TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 405. 122

ANTHONY LAWSON, APPELLANT,

vs.

GEORGE R. C. FLOYD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED OCTOBER 17, 1884.

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1 Pleas before the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, at Charleston, in said district, on the 26th day of November, 1883.

Be it remembered that heretofore, to wit, at a district court of the United States for the district aforesaid, holden at Charleston aforesaid, on Wednesday the 1st day of May, 1878.

GEORGE R. C. FLOYD
vs.
JOHN W. JOHNSTON *et al.* } In Chancery.

This day came the defendants, by their counsel, and here filed in this court a copy of the record and proceedings in this cause from the circuit court of Logan county, West Virginia; and, on their motion, it is adjudged, ordered, and decreed that this cause be here docketed in this court and proceeded in as if it had been originally commenced herein; which record, referred to in the foregoing order, is in the words and figures following, to wit:

Pleas had before the circuit court of Logan county.

Be it remembered that on the 6th day of October, 1877, the following bill in chancery was filed in the clerk's office of the circuit court of Logan county, West Virginia:

Bill.

2 The bill of complaint of George R. C. Floyd against Anthony Lawson, John W. Johnston, James M. Payne, Louisa Buchanan, James A. Sidebottom, James M. Jackson, J. B. Buskirk, Simpson Ellis, Larkin Justin, Thomas Avis, Hickman S. White, John Chafin, William Chafin, J. E. Rickiter, James A. Nighbut, Henry Nighbut, Harvey Walker, and John V. Buskirk, filed in the circuit court of Logan county.

To the Honorable Evermont Ward, judge of the circuit court of said county:

The above-named plaintiff complains and says that on the 2nd day of December, 1857, he entered into a contract with the defendant, Anthony Lawson, for an exchange of lands. By the stipulations of said contract the plaintiff, George R. C. Floyd, on his part, sold to the said defendant, Anthony Lawson, two several tracts of land, situated in Tazewell county, Virginia, in the west end of Burke's Garden—one tract known as the Waterford place and supposed to have contained eight hundred and two acres, and the other tract known as the Smith place, adjoining the first-named tract, & was supposed to contain four hundred and sixty-seven acres; the title to the first-named tract of land was in John B. Floyd and this plaintiff, and the title to the second and last-named tract was in one Ballard P. Smith—for the sum of twenty-six thousand dollars, and the said plaintiff agreed to and with the defendant, Anthony

Lawson, to procure deeds to him, with covenants of general warranty and relinquishment of dower, upon the payment
3 of the purchase-money set forth in said contract, and was to deliver up the possession of said lands to the said defendant at once; that the defendant, Anthony Lawson, on his part for the said tracts of land, bound himself to pay for this plaintiff the following sums, to wit: To Ballard P. Smith the amount for which said Smith's place sold for under a decree of the circuit court of Washington county, which was supposed to be at that time eight thousand four hundred and ten dollars, but it was then understood between the parties that if that sum was not correct the true sum was thereafter to be ascertained and paid accordingly; and, further, the said defendant, Anthony Lawson, was to pay one A. S. Gray the sum of $9,850 00, to be paid in three equal installments, and also to pay to this plaintiff the property of the said defendant, Anthony Lawson, situated at Logan Court-House, consisting of five half-acre lots, to wit, Nos. 8, 9, 10, 11, & 12, in the plan of the town formerly known as Lawnsville (now Aracoma), and about one thousand acres of land lying on the east side of Guyandotte river and north of Aracoma, being all the land owned by said defendant, Anthony Lawson, below or north of Kezer's branch, lying back of lots Nos. 6 & 7 and below the public square and down as far as McDonald's land, for which said lots and land this plaintiff agreed to pay to the said Anthony Lawson, in the exchange of land as aforesaid, the sum of ten
4 thousand dollars; and the said defendant, Anthony Lawson, agreed to and with this plaintiff to make to him a deed, with covenants of general warranty and relinquishment of dower, to the above-described lands, except one tract which had been recently granted to the defendant Lawson and that part of another tract lying back from the river, which the said defendant was to convey specially; and it was further agreed that the difference between six thousand dollars and the sum necessary to be paid to Ballard P. Smith should be due from this plaintiff to the defendant, Anthony Lawson, to have been paid by the plaintiff to the said Lawson when he should deliver the possession of the lots, &c., to the plaintiff, a copy of which contract and agreement is filed herewith, marked "A," and prayed to be made part of this bill of complaint.

And the plaintiff would further represent that he failed to pay that portion of money mentioned in contract and agreement of the 2nd day of December, 1857, to wit, the difference between the six thousand dollars and the amount which the said defendant, Anthony Lawson, was to pay Ballard P. Smith, and which was a lien on the land sold by the defendant, A. Lawson, to this plaintiff, in the county of Logan, and mentioned in the agreement aforesaid, and that the defendant, Anthony Lawson, after the purchase-money became due and payable on that portion which was a lien on the Logan lands, instituted a suit in the circuit court of Logan —, on the chancery side thereof, against George R. C. Floyd,
5 this plaintiff, and others touching the balance of the purchase-money claimed by the said defendant for the tract of land near Logan Court-House, which said suit was compromised

between the said defendant, Anthony Lawson, and the plaintiff and John W. Johnson, as will appear by a contract and agreement entered into on the 3d day of August, 1871; by the stipulations of said contract it was agreed that the said suit should be dismissed at the next term of the circuit court of Logan county next after the date of the contract of the 3d day of August, 1871, and which was, as well as the plaintiff recollects, accordingly done; that the terms upon which all the matters of the said suit were settled are fully set forth in the contract last aforesaid. Among other things, it was agreed and concluded that the defendant, John W. Johnston, should assume, and by the stipulations of said contract the said John W. Johnston did assume, to pay to Anthony Lawson the balance of that portion of the purchase-money, or that which was a lien on the lands sold by the defendant, Anthony Lawson, to this plaintiff, situated in the county of Logan, amounting then to the sum of $4,851.30, including principle and interest and the costs of suit, estimated at $200.00, making in all $5,051.30, payable as follows, to wit, one-third on or before the first day of January, 1873; one-third on or before the first day of January, 1874; one-third on or before the first day of January, 1875, all bearing interest, at 6 per cent. per annum,
6 from the date of said contract and agreement; and it was further agreed by the parties to the said agreement, the said Anthony Lawson and this plaintiff, that the property sold by the defendant, Anthony Lawson, to this plaintiff, in the county of Logan, to wit, the tract of land estimated to contain 1,000 acres, and the lots of land, and all the lands owned by the said Anthony Lawson lying below the Kezres branch above Aracoma, lying back of lots Nos. 5, 6, & 7, in the original plat of the town of Lawnsville (now Aracoma), including the following town lots, as laid down on said plat of said town of Lawnsville, Nos. 8, 9, 10, 11, & 12; thence down the river to box-elder at the lower end of said Anthony Lawson's land; thence with the division line between said Lawson's land and McDonald's land; thence up the point of the ridge below the Sugar Camp Hollow to the back line of said Lawson's land; thence with the back line of the said Kizres branch, and thence down the same to the beginning, should be controlled by the said John W. Johnston, and should be in the said Johnston as an indemnity to him, and the legal title to be retained by the said defendant, Anthony Lawson, until the payment of the purchase-money by the said Johnston and Floyd, except certain portions of lands and lots sold to Isaac Morgan and John & Urias Bushkirk; and it was further agreed by
7 the parties to the said contract that such portions of the said land should be sold by the said John W. Johnston or his agent should be conveyed by the said defendant, Anthony Lawson, to the purchaser upon payment to him of the purchase-money of the said portion so sold, and the balance of the lands, if any, not sold by the said Johnston or his agent to third parties should be conveyed by the defendant, Anthony Lawson, to this plaintiff when the said sum of $5,051.30 was paid, with all its interest, a copy of which agreement is filed herewith, marked "B," and prayed to be made part of this bill of complaint; and the plaintiff would further represent

that by virtue of the said agreement of date the 3rd day of August, 1871, this plaintiff was appointed the agent of John W. Johnston, duly authorized to make sales of the lots and tracts of land purchased by this plaintiff of the defendant, Anthony Lawson, at and near Logan Court-House, referred to in said agreement, and by virtue of his agency and authority conferr-d upon him, as aforesaid, the plaintiff in good faith sold the following lots and parcels of land mentioned in said agreement to the following parties, to wit: one lot, No. —, to Louisa Buskirk (now Buchanan) for the sum of $800.00; one lot, No. —, to James A. Sidebottom for the sum of $150.00; two lots, Nos. —, to James M. Jackson for the sum of $450.00; one lot, No. —, to J. B. Buskirk for the sum of $200.00; two lots, Nos. —, to Simson Ellis for the sum of $310.00; three lots, 28 acres, to Larkin Justice for the sum of $800.00; two lots to Thomas Avis for
8 the sum of $200.00; two ten-acre lots to H. S. White for the sum of $650.00; four lots to John Chalfin and William Chafin for the sum of $750.00; one lot to J. E. Ricketts for the sum of $400.00; one lot to Henry Nighbut for the sum of $100.00; one lot to Harvey Walker for the sum of $350.00, amounting in all to the sum of $5,160.00; that the plaintiff made most of the sales aforesaid in the years 1871 & 1872, and at the time of making the said sales he took from the parties separately an obligation to pay the amount to the defendant, Anthony Lawson, which obligations are of record in the clerk's office of Logan county court, copies of which will in due time be filed herewith, numbering from 1 to 12, and prayed to be made a part of this bill; and the said plaintiff, while acting as such agent and within the scope of his authority, divided a portion of said lands into town lots, providing the same with proper streets and alleys, part of the sales above made being a portion of the lots so laid out, and while performing the duties of his agency in good faith and having a due regard to the enhancement of the value of the said property, the said John W. Johnston, arbitrarily and without any cause known to this plaintiff and after he had sold nearly a sufficient amount of said property to satisfy the amount assumed by the said defendant, John W. Johnston, to Anthony Lawson, as per agreement of the 3d day of August, 1871, removed this plaintiff from any further agency or control over the
9 lots and parcels of land aforesaid and appointed James M. Payne his agent and attorney instead of this plaintiff, with the same powers and duties formerly conferred upon this plaintiff; and the said James M. Payne, defendant, acting in the capacity of such agent and as the attorney for the said John W. Johnston, has ignored the sale made by this plaintiff to Louisa Buskirk (now Louisa Buchanan), as hereinbefore mentioned, and has made sale of said lot, together with what is known as the mill lot, to one James A. Nighbut for the sum of $500.00, and for which the said Nighbut, as this plaintiff is informed, executed his bond, payable to the defendant, Anthony Lawson, for the same, and that the said Lawson has made a conveyance of the said lots to the said Neighbut. Plaintiff would further represent that the said Louisa Buskirk was competent and able to have paid the purchase-money on said lots, and

that the mill lot was worth $300.00, and had refused that sum for it; that at that price, added to the sale of the lots to Louisa Buskirk, at $800.00, and the accruing interest, amounting to some $200.00, would make the bonds of Louisa Buskirk and the mill lot of the value of $1,300.00 at the date of the sale by the defendant Payne to the said James A. Nighbut, showing a loss to this plaintiff of about $800.00; and the plaintiff further represents that the next transaction of the defendant Payne as such agent was to sell to the defendant, Larkin Justice, all the remaining town lots in the
10 lower bottom, there being ten or twelve of the same, at the very reduced price of $150.00, when this plaintiff had sold several of the adjoining lots at $100.00 each; that the said Payne, in making sales to the said Justice, had no regard to the town plat whatsoever, ignoring the streets *in toto*, thereby reducing the value of the whole of that part of the said property to the great and irreparable damage of this plaintiff. The plaintiff further represents that the next transaction of the said Payne as such agent was the sale of some 7 to 10 lots to John V. Buskirk, in that portion of Floyd's addition to the town of Aracoma, in the northeast corner of the same, for the sum of $150.00, having no regard to the streets whatever laid down in the plat of said addition, thus materially affecting the price and value of the lot adjoining thereto already sold, as well as the remaining lots unsold.

And the plaintiff further represents that the said James M. Payne, as the agent for the said John W. Johnston, has now advertised all of the remaining town lots in the town of Aracoma and the lands sold by the defendant, Anthony Lawson, to this plaintiff, to sell at public auction, at the October term next of the county court of Logan county, which is only a few days now off, and which, if sold, in the present condition of the financial matters of this county and other reasons, must necessarily result in a great sacrifice to this plaintiff; and the plaintiff further represents that at the time of his entering into the original contract (above mentioned, marked A) with the
11 defendant, Anthony Lawson, he was wholly unacquainted with the Logan lands mentioned in said contract as to the quantity of the same, except that part mentioned in the plat of the town as original- laid off and that portion immediately around said town; that this plaintiff resided at the time out of said county, at Warfield, in the State of Kentucky; that he did not know the number of acres contained in said boundary of land, and had no means of ascertaining the same, and that the said contract was made and entered into at Tazewell Court-House, in the State of Virginia, nearly one hundred miles from said lands, in consequence of all which the plaintiff had to rely, and did rely, upon the statement and representation of the said Anthony Lawson as to the quantity of the said lands; that his relations with the said Anthony Lawson were at the time of said contract of the most intimate character, having had frequent dealings before that time with the said Lawson with regard to money matters and real estate, all of which had caused the plaintiff to place implicit confidence in the said Anthony Lawson and to regard his word as fully to be relied upon and accepted in business

transactions, of whatever kind or character. The plaintiff charges that, notwithstanding their former business transactions and intimate relations, the said Anthony Lawson wilfully, knowingly, and falsely represented unto this plaintiff (at the time of entering into said contract A) that the said Logan lands contained "about one thousand acres,"
and thereby induced this plaintiff to enter into said contract
12 for the Logan lands aforesaid, as set out in the agreement of the
2nd day of December, 1857; that the plaintiff would not have entered into said contract but for said representations so made as aforesaid by the said Lawson, in whom he was induced to confide by the intimacy of their relations and the business transactions before that time had between them as above set forth; that the plaintiff was financially embarrassed and was in great need of money at the time of entering into said contract, and was induced by the said Lawson to yield to his representations and to make the trade mentioned in said contract; that if he had taken time to have come to the county of Logan to have ascertained the quantity of land he would in all probability have lost the opportunity of effecting the sale of his Tazewell lands and relieving himself of his embarrassments; that he deemed it unnecessary to hazard such an opportunity, having such implicit confidence in the man with whom he was dealing. And the plaintiff charges that in pursuance of such representations he executed said contract, took possession of said lands and entered upon the same, and has ever since exercised acts of ownership thereto and payed the taxes thereon; that on the — day of ——, 186–, the said Anthony Lawson instituted in the circuit court of Logan county a suit in chancery against this plaintiff and others for the recovery of $—, claimed by said Lawson as balance of the purchase-money due by the plaintiff on the Logan lands; that the plaintiff, still not suspecting the truth of the aforesaid representations made by the said Lawson as aforesaid
13 touching the quantity of the said Logan lands, to wit, on the
3rd day of August, 1871, entered into an agreement with the said Anthony Lawson and John W. Johnson, the terms of which agreement will be seen by reference to Exhibit "13," filed herewith; that in consequence of said agreement said suit was dismissed; that in the fall of 1875 the plaintiff, in consequence of applications made to him for the purchase of portions of said land by different parties concerned—the idea for the first time of having a survey of said land made—accordingly had a survey made by Andrew Dingers, a surveyor of Logan county, running the same with reference to the description set forth in Exhibits A & B, as will be seen by reference to the plat of said survey, herewith filed, marked "C," as a part of this bill, when to the plaintiff's great surprise & astonishment he for the first time became acquainted with the startling fact that the said lands, in truth and in fact, contained in the aggregate only 592 acres instead of about 1,000 acres, as represented by the said Anthony Lawson, as hereinbefore set forth, being a deficiency of 408 acres less than that contracted for as aforesaid; that immeately after ascertaining the deficiency in said lands the complain communicated by letter with the said Anthony Lawson,

calling his attention to said deficiency and requesting him to pay to John W. Johnston the money paid to him by said Johnston on account of the plaintiff upon said land, and to make proper reduction to this plaintiff for said deficiency, — which said communication the said Lawson has failed and neglected to pay any attention, and has shown no inclination to relieve this plaintiff of the wrong, injury, & fraud put upon him by virtue of said contract "A" touching the Logan lands, and the deficiency in quantity thereof as hereinbefore stated; but, on the contrary, he has ever since said communication sought to enforce the collection of the money aforesaid, regardless of the deficiency and the plaintiff's rights in the premises.

The plaintiff would further represent that at the time of entering into said contract "A," as an additional reason for confiding in the said Lawson's judgment, knowledge, and representation as to the quantity of said land, he was aware that the said Lawson from early boyhood had lived upon the same or in the vicinity thereof, and for many years, while living as aforesaid, the said Lawson was the actual owner thereof, and must, therefore, have known, and this plaintiff believing, and at the time of entering into the contract marked "A" fully and implicitly, that the said Lawson did know beyond a peradventure the quantity of said land and the s'd things in addition to those already stated in this bill and in connection therewith, induced this plaintiff to rely upon the representations of the saw Lawson and caused him to be misled by the said Lawson, to his great injury, in the entering into and the execution of said contract "A." The plaintiff charges, in addition to what he has already charged herein, that the said Lawson, John W. Johnston, & James M. Payne, contriving and intending to vex, harass, and impoverish this plaintiff, have instituted a number of suits in the circuit court of Logan county against the plaintiff as the vendors of said land and *acquaint* his subvendors, to wit, nearly all the defendants in the bill; that said suits were not instituted until after this plaintiff had communicated to the defendant, Anthony Lawson, the deficiency in the land, as hereinbefore stated in this bill; that even if the said Lawson, Johnston & Payne were entitled to enforce the collection of the balance of the purchase-money specifically set forth in Exhibit "B" there is, and was at the time of the institution of the said last-mentioned suits, a sufficient quantity of the said lands unincumbered by prior lien out of which to enforce said recovery without interfering and utterly disregarding sales of lands which this plaintiff had made as aforesaid, and proceeding to resell the same at much smaller prices than this plaintiff had sold them, and thereby decreasing the value, not only of said portion of land, but of the whole boundary. The plaintiff is advised that a court of equity will not permit the said contracts mentioned in Exhibits "A & B" to be enforced against this plaintiff, procured by fraudulent representations as above stated, nor will it, in the absence of such fraud, permit the same to be enforced without first inquiring into and settling the question of the deficiency of the 408 acres hereinbefore mentioned, or to permit said suits

pending in the circuit court of Logan county to be further proceeded in, or to permit said lands further to be sold, until the whole matters hereinbefore set forth and complained of at large can be inquired into and adjudicated according to the principles of equity. The plaintiff therefore prays that the purchase-money for said Logan lands, as mentioned in contract "A," may be abated in pro-
16 portion to the deficiency of said lands hereinbefore set forth; that the said contract "A" may be corrected; that the said Lawson may be compelled to reimburse the said John W. Johnston for money paid on account of the plaintiff to the said Anthony Lawson by the said Johnston, and also to reimburse and repay this plaintiff all moneys collected by him or paid to him on account of sales of lots of land made as hereinbefore mentioned by this plaintiff, and also on account of sales made by James M. Payne, if any; that the said John W. Johnston be required to refund to this plaintiff all moneys heretofore collected by or paid to him on account of any or all sales of lots of land as aforesaid made, and that the said Anthony Lawson refund to this plaintiff whatever other sum may be found due to plaintiff by reason of the deficiency of the said Logan lands, or any other moneys which he may be entitled to upon a correction of contract "A," or any transaction mentioned in Exhibit "B," growing out of the said land transaction or in any wise connected therewith, either in Exhibits "A" or "B;" that the said contracts made by the said James M. Payne, as the agent of John W. Johnston, hereinbefore described, be rescinded, set aside, and held for nought; and that the said John W. Johnston, James M. Payne, and Anthony Lawson be restrained and inhibited and enjoined from further collection of any moneys due or hereafter to become due upon any of said sales or lots of said land; that they hold any money so collected or in their hands subject to the order of this court; that the said Johnston, Payne & Lawson, their agent, and any and all persons acting under or for them, be inhibited, restrained, and enjoined
17 from the sale of said lands or lots or any part thereof, or making deeds of conveyance to any that may be already sold; that the said defendants, Louisa Buskirk (now Buchanan), James A. Sidebottom, James M. Jackson, J. B. Buskirk, Simpson Ellis, Larkin Justice, Thomas Avis, H. S. White, John Chafin, William Chafin, J. E. Ricketts, Henry Nighbut, Harvey Walker, James A. Nighbut, and John V. Buskirk, be inhibited, restrained, and enjoined from further paying over any moneys due or hereafter to become due upon any purchase of any of said lots made by them or any of them from the said plaintiff, or from the said James M. Payne, agent, as aforesaid, or from either of them, and that the said John W. Johnston, James M. Payne, Anthony Lawson, and all other persons interested therein be inhibited, restrained, and enjoined from the further prosecution of any and all suits now pending in the circuit court of Logan county against said lands or lots for the payment of any money due from any of the defendants for the purchase thereof until the further order of this court.

The plaintiff also prays that upon the final hearing of this cause

the said Anthony Lawson be required to execute and file with the papers of this cause an apt and proper deed, duly acknowledged with relinquishment of dower, to this plaintiff for the said Logan lands; and the plaintiff prays for such other, further, and general relief as to equity may seem meet and his cause may require; and in duty bound he will ever pray.

GEORGE R. C. FLOYD,
By Counsel.

STOLLINGS & WATTS & SHUMATO, *Sol's.*

18 STATE OF WEST VIRGINIA, *Logan County,* } *To wit:*

George R. C. Floyd, the plaintiff in the foregoing bill, being duly sworn, upon his oath says that the allegations and facts contained in the foregoing bill, so far as stated on his own knowledge, are true, and, so far as stated upon information, he believes them to be true.

GEO. R. C. FLOYD.

Taken, subscribed, and sworn to before me, the undersigned, this 29th day of September, A. D. 1887.

W. H. PECK,
N. Public.

And upon which bill is the following endorsement:

"Injunction awarded the plaintiff in accordance with the prayer of the within bill, inhibiting and restraining the within-named defendants, Anthony Lawson, John W. Johnston, & James M. Payne, their agents, attorneys, and all others from any and all collection of moneys due or to become due for the lands and lots in the bills mentioned, on sales thereof, from making any other or further sales of said lands or lots, or from making any deeds or conveyances for said lands or lots already sold, and the purchasers of said lands and lots, the defendants herein named, be, & are hereby, restrained from paying over either to the said Anthony Lawson, John W. Johnston, or James M. Payne any portion of the purchase-money due from them for the lands and lots, respectively, purchased by them, either of the plaintiff, as agent of the said Johnston or of the said Lawson, Johnston, or Payne, either that due or to become due, and that the said Lawson, Payne, & Johnston, their agents, att'ys, and all other
19 persons, be inhibited and restrained from the prosecution of any and all suits against the purchasers of said lots and lands now pending in the courts of Logan county until the further order of the circuit court of Logan county or a judge in vacation; but this order is not to take effect until the plaintiff or some other person for him shall execute before the clerk of the circuit court of Logan county a bond in the penalty of $500.00, conditioned that the plaintiff will pay all costs and damages which may be incurred or sustained by any person if said instruction should be dis-olved.

Oct. 6, 1877.

EVERMONT WARD.

To the clerk cir. court Logan county."

2—405

And on the 10th day of October, 1877, the following bond was filed in the office of the clerk of the circuit court of Logan county:

"Know all men by these presents that we, George R. C. Floyd and G. W. Taylor, are held and jointly bound unto the State of West Virginia in the sum of five hundred dollars, payment whereof well and truly to be made, and for which we bind ourselves, jointly and severally, firmly by these presents.

Witness our hands and seals on this 10th day of October, 1877.

The condition of the above obligation is such that whereas the above-bound George R. C. Floyd hath obtained an injunction, bearing date 1877, Oct. 6th, in the case of the said George R. C. Floyd *vs.* Anthony Lawson & others, in the circuit court of Logan county, State of West Virginia, in chancery, in which the defendant-, Anthony Lawson, John W. Johnston, and James M. Payne, their agents, attorneys, and all others, are inhibited and restrained by said injunction from any and all collections of moneys due or to become due for the lands and the lots in the bill mentioned on sales thereof, and from making any other or further sales of said lands or lots, or from making any deeds or conveyances for said lands or lots already sold, &c., &c.:

Now, therefore, if the said George R. C. Floyd shall pay all costs and damages which may be incurred or sustained by any person if said injunction should be dis-olved, then the above obligation to be void; else remain in full force and virtue.

GEORGE R. C. FLOYD. [SEAL.]
G. W. TAYLOR. [SEAL.]

Signed, sealed, and approved by me this 10th day of October, 1877.

J. A. DERKINS, *Deputy*,
For JOHN CHAFIN, *Clerk*."

And on the 11th day of October, 1877, the following affidavit was filed in the office of the clerk of the circuit court of Logan county, to wit:

Affidavit.

"In the Circuit Court of Logan County. In Chancery.

GEORGE R. C. FLOYD, Pl'ff, *vs.* ANTHONY LAWSON & Others.

The pl'ff, Geo. R. C. Floyd, this day made oath before me that Anthony Lawson, John W. Johnston, and Harvey Walker are non-residents of the State of West Virginia.

GEO. R. C. FLOYD.

Sworn to and subscribed before me this 11th day of October, 1877.

ISAAC MORGAN,
Pres. of Logan Co. Court."

And on the 22nd day of November, 1877, the following summons in chancery was issued from the clerk's office of the circuit court of Logan county:

Sum's to Logan Co.

"The State of West Virginia to the sheriff of Logan county, Greeting:

21 We command you that you summon Anthony Lawson, John W. Johnston, James M. Payne, Louisa Buchanan, James A. Sidebottom, James M. Jackson, J. B. Buskirk, Simpson Ellis, Larkins Justice, Thomas Avis, Hickman S. White, John Chafin, William Chafin, J. E. Ricketts, James A. Nighbut, Henry Nighbut, Harvey Walker, and John V. Buskirk, if they be found in your bailiwick, to appear before the judge of our circuit court of Logan county at rules to be held in the clerk's office of said court on the first Monday in December next, to answer a bill in chancery exhibited against them by George R. C. Floyd, and have there then this writ.

Witness John Chafin, clerk of our said court, at the court-house of said county, the 22nd day of November, 1877, and in the 15th year of the State.

JOHN CHAFIN, *Clerk.*"

MEMO.—Injunction awarded the plaintiff in accordance with the prayer of the within bill, inhibiting and restraining the within-named defendants, Anthony Lawson, John W. Johnston, & James M. Payne, their agents, attorneys, and all others from any and all collections of moneys due or to become due for the lands and lots in the bills mentioned on sales thereof, and from making any other or further sales of said lands or lots, or from making any deeds or conveyances for said lands or lots already sold, and that the purchasers of said lands & lots, the defendants herein named be, and are hereby, restrained from paying over either to the said Anthony Lawson, John W. Johnston, or James M. Payne, any portion of the purchase-money due from them for the lands and lots respectively pur-

22 chased by them either of the plaintiff, as agent of said Johnston, or of the said Johnston, Lawson, or Payne, either that due or to become due, and that the said Lawson, Payne, & Johnston, their agents, att'ys, & all others, be inhibited and restrained from the prosecution of any & all suits against the purchasers of said lots & lands now pending in the courts of Logan county until the further order of the circuit court of Logan county or a judge in vacation; but this order is not to take effect until the plaintiff or some one for him shall execute before the clerk of the circuit court of Logan county a bond, with security, in the penalty of $500.00, conditioned that the plaintiff will pay all costs and damages which may be incurred or sustained by any person if said injunction should be dissolved.

Bond given with security and approved by clerk.

Teste: JOHN CHAFIN, *Clerk.*

Sheriff's Return.

Endorsed: We accept legal service of within summons this November 22nd, 1877.

JOHN CHAFIN.
WILLIAM CHAFIN.

Executed on Louisa Buchanan, Jas. M. Jackson, J. V. Buskirk, Simpson Ellis, Hickman S. White, J. E. Ricketts, James A. Nighbut, Henry Nighbut by giving each of them an office copy of this writ on the 29th day of November, 1877, and J. B. Buskirk by giving an office copy to his wife, a white person and above the age of 16 years and a member of his family, and explaining its nature to her as well as I could, on 29th day of Nov'b'er, 1877.

JNO. E. PECK, *Dep.*
C. McDONALD, *S. L. C.*

23 Executed on L. Justice by giving him an office copy of this summons on the 4th day of Dec., 1877, and on Thomas Avis by leaving an office copy of this summons with his wife, a white person, and above the age of 16 years and a member of his family, and explaining its nature to her as well as I was able to do, said Avis not being at home Dec. 4th, 1877.

JOE A. PEEK, *Dep.*,
For C. McDONALD, *S. L. C.*

Sum's to Boone.

And on the said 22nd day of November, 1877, a copy of the above summons and memorandum was directed to the sheriff of Boone county and returned with the following endorsement:

Return.

"STATE OF WEST VIRGINIA, *Boone County,* } *To wit:*

"I, C. A. Smoot, do swear that on the 29th day of November, 1877, I delivered to James A. Sidebottom an office copy of this summons and memorandum in the county of Boone.

"C. A. SMOOT.

"Sworn to and subscribed before me this 29th day of November, 1877.

"SAMUEL SMOOT,
"*N. P. for Boone County.*"

Sum's to Kanawha.

And on the said 22nd day of November, 1877, a copy of the above summons and memorandum was directed to the sheriff of Kanawha county and returned with the following endorsement:

Return.

"I accept legal service of the within writ this 30th day of November, 1877.

"J. M. PAYNE.

"Service also accepted for John W. Johnston, said acceptance to have the same effect as an order of publication against said Johnson.

"Nov. 30th, 1877.

"J. M. PAYNE,
"*Att'y for John W. Johnston.*"

24 And *Order of Publication.*

WEST VIRGINIA, *ss:*

At rules held in the clerk's office of the circuit court of Logan county on the first Monday in December, 1877:

G. R. C. FLOYD
vs.
ANTHONY LAWSON *et al.* } In Chancery.

It appearing by affidavit filed that the defendants, Anthony Lawson, John W. Johnston, and Harvey Walker, are non-residents of this State, and the object of this suit is to abate the purchase-money of the Logan lands, mentioned in the plaintiff's bill, and to correct the contract ("A") and to compell the defendant Lawson to reimburse the defendant, John W. Johnston, for money paid by him on account of the plaintiff, and also to reimburse and repay the plaintiff all moneys collected by him or paid to him on account of sales of lots of land mentioned, and also on account of sales made by J. M. Payne, if any, and to require the defendant, John W. Johnston, to refund to the plaintiff all moneys heretofore collected by or paid to him on account of sales of lots of land, and rescind the contract made by James M. Payne as agent, &c., and to restrain the defendants Lawson & Johnston, and their agents from further sales and collections and from making deeds to any of the Logan lands in the bill mentioned, and to prevent any and all of the other defendants from paying any of the purchase-money on said lands to said Lawson or Johnston, and to compel the said Lawson to deed
25 the said lands to the plaintiff, it is ordered that the said non-resident defendants appear here within one month after the first publication of this order and do what is necessary to protect their interest in the premises.

A copy.
Teste: JOHN CHAFIN, *Clerk.*

STOKINGS & WATTS, *Sol's.*

Dec. 13–4t.

There is no proof of the publication of this order filed among the papers of this cause.

Upon the bill in this cause is the following endorsement made by the clerk of the circuit court of Logan county: "1877, Dec'r rules. Bill & exhibits filed and decree *nisi* as to defendants served, and order of publication as to def'ts Johnston, Lawson, & Walker. 1878, Jan'y rules. Bill taken for confessed as to defendants; served and set for hearing & continued as to defendants Johnston, Lawson, & Walker. Feb'y rules. Order of publication executed as to defendants Johnston, Walker, & Lawson & decree *nisi*. March rules. Bill taken for confessed as to defendants Johnston, Lawson, & Walker and set for hearing.

The following exhibits were filed with the plaintiff's bill:

EXHIBIT "A."

"Memorandum of an agreement, made this 2nd day of December, 1857, between George R. C. Floyd, of the one part, and Anthony Lawson, of the other part, witnesseth: That the said Floyd has sold to the said Lawson for twenty-six thousand dollars two several tracts of land lying in the west end of Burke's Garden, in the county of Tazewell, one known as the Waterford place & supposed to
26 contain eight hundred & two acres, and the other known as the Smith place, adjoining the other, and supposed to contain four hundred and sixty-seven acres; the title to the Waterford place is in John B. Floyd; & the said Geo. R. C. Floyd binds himself to procure a deed therefor to the said Lawson with general warranty & relinquishment of dower, and the title to the Smith place is in one Ballard P. Smith, who will make a deed therefor, with general warranty and relinquishment of dower, upon the payment of the purchase-money hereinafter named; and the said Floyd is to deliver possession of said tracts of land at once; and the said Lawson for the said tracts of land binds himself to pay as follows, viz: To Ballard P. Smith the amount for which said Smith place sold for under a decree of the circuit court of Washington county, which is supposed to be $8,410, but if that is not the correct sum it is to be ascertained, & to pay to A. S. Gray the sum of $9,850, which may be paid in three installments of $3,283.33 cents each—one due January 1st, 1859; one due January 1st, 1860, and the other due January 1st, 1861, each bearing interest from January 1st, 1858; and also to convey to the said Floyd the property of said Lawson at Logan Court-House, consisting of five half-acre lots, viz., No-. 8, 9, 10, 11, & 12 in the original plan of the town of Lawnsville, now Aracoma, and about 1,000 acres of land lying on the east side of Guyandotte & north of Aracoma, being all the lands owned by said Lawson below or north
27 of Kezer's branch, lying back of lot No-. 6 & 7 & below the public square and down as far as McDonald's land, and the said Lawson puts the property at ten thousand dollars, and the said Lawson is to make the said Floyd a deed, with general warranty & relinquishment of dower, to the above-described property, except one recent grant and part of another tract lying back from the river, which he is only to convey specially, & the said Lawson is to deliver possession of the lands and lots by 1st March next, except the store-house and dwelling-house, and — of them by the 1st of May next; and whereas the above payment to Gray & Smith & the above property at $10,000 makes more than the sum of $26,000, which the two tracts of land in the garden are rated at, it is agreed that the difference, whatever it may be, between six thousand dollars and the sum necessary to be paid to Smith shall be due from said Floyd to said Lawson, to be paid when said Lawson delivers possession of the lands, lots, &c., at Aracoma, and the said Lawson has the privilege of retaining the title to the land to be conveyed by him till the said balance is paid.

Witness the following signatures and seals.

GEO. R. C. FLOYD. [SEAL.]
A. LAWSON. [SEAL.]

"EXHIBIT B."

Copy.

"This contract, made this 3rd day of August, 1871, between
28 Anthony Lawson, Geo. R. C. Floyd, and John W. Johnston, witnesseth: That whereas a certain suit is pending in the circuit court of Logan county, West Virginia, in which Anthony Lawson is plaintiff and said Floyd and Johnston & others, defendants, touching a balance of purchase-money claimed by said Lawson for a tract of land near Logan Court-House: Now, therefore, the said suit is to be dismissed at the next term of the court, each party paying his own costs, and all matters in said suit are settled on the following terms, viz., a note executed by A. Lawson to Geo. R. C. Floyd, which was filed by said Floyd as an offset against said Lawson in the said suit, is to be credited with the sum of two thousand seven hundred and sixty dollars, as of the date of June 30th, 1858, being the amount, principal, and interest, at that date of the legacies given by the will of Mrs. Letitia Floyd to Letty P. Lewis and Mikatte P. Johnston, which legacies were paid by said Lawson, the said payments so made being hereby ratified by said Floyd; and it is further agreed that said Johnston shall assume and he does hereby assume and bind himself to pay to Anthony Lawson the balance of said purchase-money, amounting, principle and interest, at this date, to $4,851.30, and the costs of said suit, estimated to be $200.00, making in all five thousand and fifty-one dollars and thirty cents, as follows, viz., one-third on or before the first day of January, 1873, one-third on or before the first day of January, 1874, and one third on or before the first day of January, 1875, all bearing interest at six per cent. per annum
29 from this date; and it is further agreed that said Lawson and said Floyd shall each, and they do hereby, bind themselves that the property and the control of the tract of land herein mentioned, sold by the said Lawson to said Floyd, estimated to contain 1,000 acres, shall be in said Johnston as an indemnity to him, which is described as follows, viz: All the land owned by said Lawson lying below the Kezers branch above Aracoma, lying back of the lots No-. 5, 6, & 7, in the original plan of the town of Lawnsville (now Aracoma), including the following town lots, as laid down in said plan of the town of Lawnsville, viz., No-. 8, 9, 10, 11, & 12; thence down the river to box-elders, at the lower end of said Lawson's lands; thence with the division line between said Lawson's land and McDonald's land; thence up the point of the ridge below the sugar camp hollow to the back line of said Lawson's land; thence with the back line to the said Kezers branch, and thence down the same to the beginning; but the said Lawson is to retain the legal title to said land and lots as a security for the payment of the said purchase-money, except the land & lots sold to Isaac Morgan & John & Urias Buskirk; and it is further agreed that said portions of said land as may be sold by said Johnston or his agent shall be conveyed by the said Lawson to the purchaser upon the payment to him of the purchase-money of the said portion, and the balance of the land, if any, not sold by the said Johnston or

his agent to third parties is to be conveyed by the said Lawson to the said Floyd when the said sum of $5,051.30 is paid, with its interest; and it is further agreed that the portions of land sold by Geo. R. C. Floyd to Isaac Morgan, being about 500 acres, at the lower end of the tract, and the lots No-. 11 & 12, in the original plan of the town of Lawnsville, now Aracoma, lying between the river and the present street, & extending down to the lower corner of the stable & thence to the river, sold to Urias Buskirk, shall be ratified and the legal title shall be conveyed by said Lawson to the said Morgan and to the said Buskirk, respectively, or to such persons as they shall in writing direct whenever requested to do so by said Floyd.

And the said Lawson shall convey all the old patent lands with general warranty, and the back lands with special warranty.

Witness the following signatures and seals.

A. LAWSON. [SEAL.]
GEO. R. C. FLOYD. [SEAL.]
JOHN W. JOHNSTON." [SEAL.]

Stamped and acknowledged by the parties before a notary public Aug. 3d, 1871.

(Here follows diagram marked p. 31.)

"S. 31, W. 32 poles; S. 9½, W. 43 poles; S. 29½, W. 41 poles; S. 39½, W. 46 poles; S. 61½, W. 52 poles; S. 74, W. 54 poles; S. 29, W. 26 poles; S. 47, E. 50 poles; S. 20, E. 46 poles; S. 10, W. 32 poles; S. 20, W. 16 poles; S. 31, W. 30 poles; S. 10, E. 10 poles; S. 59½, E. 34 poles; S. 73, E. 19 poles; N. 18½, E. 27 poles; S. 71, E. 37; N. 22½, E. 14 poles; S. 73½, E. 16 poles; N. 26, E. 53 poles; N. 44, E. 34 poles; N. 54, E. 12 poles, to the slick rock in the town branch; N. 3, W. 70 poles, to a white oak; N. 85, E. 66 poles, to a poplar & 2 gums; N. 38, E. 56 poles, to two chestnut oak- & two rocks; N. 62, E. 164 poles, to chestnut oak & two small chestnuts on top of a ridge;

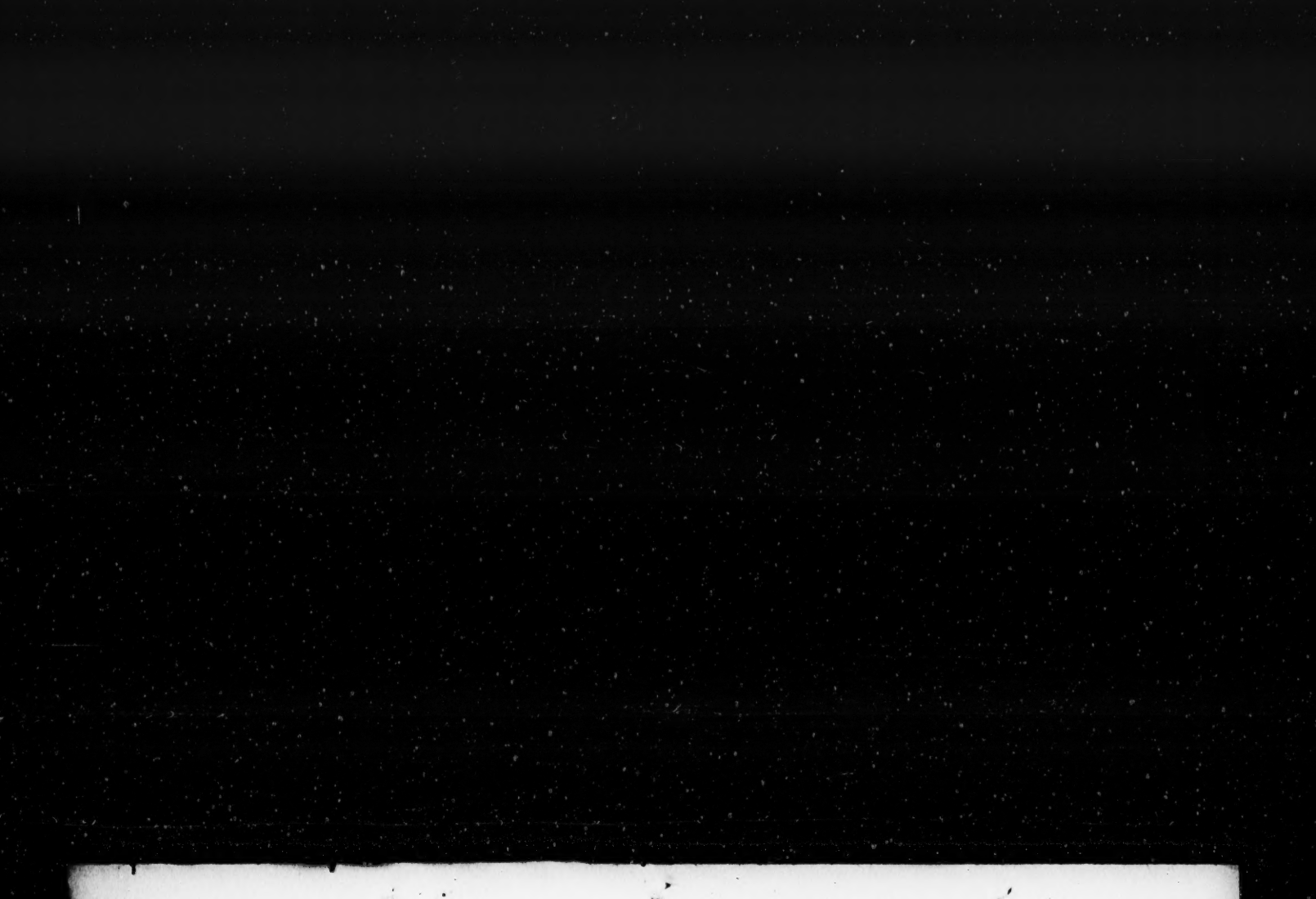
N. 54, E. 200 poles, to a chestnut oak and two white oak- on
32 top of a ridge between Peach creek and Duigess run; S. 76, W. 18 poles, to a chestnut oak on a knob; N. 56, W. 14 poles, to three small chestnuts on a knob; S. 70, W. 30 poles, to two chestnut oaks; S. 73, W. 22 poles, to a hickory and locust on a flat knob; N. 53, W. 62 poles, to three chestnut oaks on a knob; S. 54, W. 24 poles, to a chestnut; S. 78, W. 26 poles, to two hickories; S. 58, W. 30 poles, to two small pines and chestnut oak near the east end of a large cliff of *rokes;* S. 84, W. 228 poles, to the beginning.

WM. A. DUIGESS, *S. L. C.*"

And *Petition of J. W. Johnston.*

"To the Hon. Eromont Ward, judge of the circuit court of Logan county, West Virginia:

The petition of John W. Johnston, a citizen of the State of Virginia, respectfully showeth unto your honor that one George R. C. Floyd, a citizen of the State of West Virginia, has instituted a chancery



suit in this honorable court against this petitioner and the following other persons named as defendants, viz., Anthony Lawson, a citizen of the State of Virginia, & James M. Payne, Louisa Buskirk (now Buchanan), James A. Sidebottom, James M. Jackson, J. B. Buskirk, Simpson Ellis, Larkin Justice, Thomas Avis, H. S. White, John Chafin, William Chafin, J. E. Ricketts, Henry Nighbut (colored), Harvey Walker, James A. Nighbut, & John V. Bushkirk, citizens of the State of West Virginia; that said suit, so far as relates to petitioner, is brought for the purpose of enjoining him from selling certain lands and lots in the bill mentioned, and also from prosecuting certain suits named in the bill against some of the said defendants for the purchase-money of lots sold them. Petitioner
33 prays that the said chancery suit be removed to the district court of the United States (with circuit court powers) for the district of West Virginia, held at Charleston, West Virginia, which is the district in which the said county of Logan is situated; and as in duty bound petitioner will ever pray, &c.

Feb'y 18th, 1878.

JOHN W. JOHNSTON.

DISTRICT OF COLUMBIA, *ss:*

I, R. B. Nixon, a notary public in and for the District aforesaid, do hereby certify that John W. Johnston, well known to me, personally appeared before me & made oath to the above petition.

Given under my hand and seal of office Feb. 18, 1878.

[Seal R. B. Nixon, Notary Public, Washington, D. C.]

R. B. NIXON,
Notary Public.

And *Bond of J. W. Johnston.*

Removal bond.

Know all men by these presents that we, John W. Johnston and James M. Payne, surety, are held and firmly bound unto the State of West Virginia in the just and full sum of two hundred dollars; to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Sealed with our seals and dated this 18th day of February, 1878.

The condition of the above obligation is such that whereas the above-bound John W. Johnston, in a certain suit in chancery now pending in the circuit court of Logan county, West Virginia, wherein G. R. C. Floyd is plaintiff and said Johnston and Lawson and others are defendants, have petitioned said court for a
34 removal of said suit to the district court of the United States (with circuit court powers), held at Charleston, in the State of West Virginia: Now, if the said John W. Johnston shall enter into the said district court of the United States (with circuit court powers), on the first day of the next term of said court, to be held at Charleston, a copy of the record of said suit, and shall pay all costs which may be awarded by the said United States district court

if the said district court of the United States shall hold that said suit was wrongfully and improperly removed thereto, then this obligation to be void; else to remain in full force.

JOHN W. JOHNSTON. [SEAL.]
JAMES M. PAYNE. [SEAL.]

Acknowledged before me and approved.

JOHN CHAFIN,
Clerk Cir. C't Logan Co., W. Va.

DISTRICT OF COLUMBIA:

I, R. B. Nixon, a notary public in and for the District aforesaid, do certify that John W. Johnston, well known to me, personally appeared before me and acknowledged the within bond; and I do further certify before said acknowledgment the words "and Anthony Lawson," occurring three times, and "J. E. Robertson, surety," occurring once, were erased.

Given under my hand and official seal Feb. 18, 1878.

[Seal R. B. Nixon, Notary Public, Washington, D. C.]

R. B. NIXON,
Notary Public.

35 STATE OF WEST VIRGINIA, *Logan County,* } *ss:*

I, James M. Payne, of Kanawha county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of West Virginia and a property-holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities and exclusive of property exempt by law from execution; that I have property in the State of West Virginia liable to execution of the value of more than five hundred dollars.

JAMES M. PAYNE.

Subscribed in my presence by James M. Payne and by him sworn to before me this 23rd day of April, 1878.

JOHN CHAFIN,
Clerk Logan Cir. Court, W. Va.

And *Petition of A. Lawson.*

In the Circuit court of Logan County, State of West Virginia.

GEORGE R. C. FLOYD, Plaintiff,
vs.
JOHN W. JOHNSTON *et al.*, Defendants.

Petition for the removal to the district of the United States for the district of West Virginia, having circuit powers, sitting at Charleston, in said district.

To the honorable the circuit court of Logan county, State of West Virginia:

Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit ex-

ceeds, exclusive of costs, the sum or value of five hundred dollars; that the controversy in said suit is between citizens of differ-
36 ent States, and that the petitioner is a defendant in said suit; was, at the time of the commencement of this suit and still is, a citizen of the State of Virginia, and that George R. C. Floyd, the plaintiff, was then, and still is, a citizen of the State of West Virginia; the defendants, James M. Payne, Louisa Buskirk, Jas. A. Sidebottom, Jas. M. Jackson, J. B. Buskirk, Simpson Ellis, Larkin Justice, Thomas Avis, H. S. White, John Chafin, William Chafin, J. E. Ricketts, Jas. A. Nighbut, Henry Nighbut, (Harvey Walker, residence unknown), and John W. Buskirk, were, at the commencement of said suit and still are, citizens of the State of West Virginia; and John W. Johnston was, at the commencement of said suit & still is, a citizen of the State of Virginia. Your petitioner states that in the said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between the said petitioner and John W. Johnston, on the one side, and Geo. R. C. Floyd, on the other.

And your petitioner offers herewith a good and sufficient surety for his entering in said district court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said district court if said court shall hold that this suit was wrongfully or improperly removed thereto; and he prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to except the said surety and bond, and to cause the record herein to be removed unto said district court of the United States in and for the district of West Virginia as aforesaid.

And he will ever pray.

A. LAWSON.

37 STATE OF WEST VIRGINIA, } *ss:*
County of Kanawha, }

I, Anthony Lawson, being duly sworn, say that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true as I verily believe.

——— ———.

Subscribed by the said Anthony Lawson in my presence *by* and by him sworn to before me this 6th day of April, A. D. 1878.

JOS. RUFFNER,
Notary Public in & for Kanawha, W. Va.

Bond for the Removal of a Cause under the Act of March 3d, 1875.

Know all men by these presents that I, Anthony Lawson, as principal, and James A. Nighbut, as surety, are held and firmly bound to George R. C. Floyd in the penal sum of five hundred dollars; for the payment whereof, well and truly to be made unto the said George R. C. Floyd, his heirs, representatives, and assignees, we

bind ourselves, our heirs, representatives, and assignees, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Anthony Lawson having petitioned the circuit court of Logan county, State of West Virginia, for the removal of a certain cause therein pending, wherein said George R. C. Floyd is plaintiff and said Anthony Lawson & others are defendants, to the district court of the United States in and for the district of West Virginia, which said district court has circuit court powers, sitting at Charleston, in said district: Now, if the said Anthony Lawson, your petitioner, shall enter into the said district court
38 of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said district court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise remain in full force and virtue.

Witness our hands and seals this 6th day of April, A. D. 1878.

A. LAWSON. [L. S.]
J. A. NIGHBUT. [L. S.]

STATE OF W. VA., *Logan County,* } *ss:*

I, J. A. Nighbut, of said county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of W. Va., and a property holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution, and that I have property in the State of W. Va. liable to execution of the value of more than five hundred dollars.

——— ———.

Subscribed in my presence by J. A. Nighbut and by him sworn to before me this 23d day of April, A. D. 1878.

JOHN CHAFIN,
Clerk Logan C'r C't, W. Va.

STATE OF WEST VIRGINIA, *County of Kanawha,* } *To wit:*

I, Jos. Ruffner, a notary public in and for the county of Kanawha, State aforesaid, do hereby certify that Anthony Lawson, whose name is signed to the writing within, bearing date the 6th day of April, 1878, has this day acknowledged the same before me in my said county.

Given under my hand this 6th day of April, 1878.

JOS. RUFFNER,
Notary Public.

39 "And at a circuit court held for Logan county, at the courthouse thereof, on Monday, the 22nd day of April, 1878, for the transaction of chancery business.

"G. R. C. FLOYD
vs.
"JOHN W. JOHNSON *et al.* } In Chancery.

"This day came the parties, by their attorneys, and the defendants, John W. Johnson and A. Lawson, filed their separate petitions, together with their bonds and security, as required by law, for the removal of this cause in the district court of the United States for the district of West Virginia, sitting with circuit court powers, at the city of Charleston, in said district, and the court, being satisfied with the said bonds and security therein, doth approve and accept the same. It is therefore ordered and considered by the court that this cause be removed to the said district court of the United States to be therein tried and determined, and that the clerk of this court do without delay make out and certify and deliver to the said defendants or their attorneys a copy of the record herein, together with a statement of the costs incurred in this cause, upon the payment of his fees for such copy, and that all further proceedings in this cause in this court do henceforth cease."

STATE OF WEST VIRGINIA, } *To wit:*
Logan County, }

I, John Chafin, clerk of the circuit court of Logan county,
40 West Virginia, do hereby certify that the above is a true copy of the proceedings had before the circuit court of Logan county in the cause of George R. C. Floyd *vs.* John W. Johnston *et al.*, in chancery.

JOHN CHAFIN, *Clerk.*

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston as aforesaid on the 11th day of November, 1878.

This day the defendants, John W. Johnston and A. Lawson, by their counsel, respectively, tendered their several answers to the plaintiff's bill, to the filing of which the plaintiff, by his counsel, objected.

And at another day of the same term of said court, to wit, at a court held as aforesaid on the 26 day of November, 1878.

This day James M. Payne tendered his separate answer to the plaintiff's bill in this cause, and there being no objection thereto the same is ordered to be filed, and the plaintiff replies generally.

And the defendant John W. Johnston is granted leave to withdraw his separate answer heretofore tendered and to file his answer at or before the next term of this court.

The answer of John W. Johnston, afterwards filed under the last foregoing order, is in the words and figures following, to wit:

41 *The Separate Answer of John W. Johnston to the Bill Filed in this Honorable Court by George R. C. Floyd against this Respondent and Others.*

To the Honorable John J. Jackson, Jr., judge of the district court of the United States for the district of West Virginia:

For answer respondent says that he was no party to the contract referred to in the bill made on the 2nd day of December, 1857, between A. Lawson and the said Floyd and had not the least interest in it. The bill does not set forth the said contract fully, but its provisions can be seen by reference to the copy filed by the plaintiff and marked (A).

Respondent supposes that the allegations of the bill in regard to the institution of a suit by A. Lawson against the plaintiff to recover the balance of purchase-money due on the land sold by Lawson to the plaintiff and referred to in Exhibit (A) are correct. Respondent was made a party to this suit and it was compromised, as stated in the bill, the 3rd August, 1871. The precise terms of the compromise — by reference to the copy of it filed with the bill marked (B).

If the plaintiff really made the sales claimed in the bill as respondent's agent this is the first time respondent was informed of his transactions by the plaintiff. The plaintiff never at any time whilst agent made any report to respondent showing how
42 much land he had sold, the names of the purchasers, or the terms of sale. What information respondent got on these subjects he obtained from others.

And the statements now given by the plaintiff in his bill differ widely from those made by him in letters to the respondent, which will be filed and specially referred to hereafter.

Respondent knows nothing, of his own knowledge, in regard to the allegations in the bill that at the time of making said "sales the plaintiff took from the parties separately an obligation to pay the amount to the defendant, Anthony Lawson."

But respondent is informed that in some cases the plaintiff made no written contract whatever with parties — he pretends to have made sales, and in other cases merely signed the contract himself, not requiring the signature of the purchaser. If there are any such obligations as the plaintiff sets forth respondent requires them to be filed.

The plaintiff says "that, while performing the duties of his agency in good faith and having a due regard to the enhancement of the value of said property, the said John W. Johnston arbitrarily and without any cause known to this plaintiff, and, after he had sold nearly a sufficient amount of said property to satisfy the sum
43 assumed by the said defendant, John W. Johnston, to Anthony Lawson, as per agreement of 3rd day of August, 1871, removed this plaintiff from any further agency or control over the lots and parcels of land aforesaid," &c. If by "arbitrarily" the plaintiff means wrongfully, respondent protests and insists that he had the best of reasons for removing the plaintiff.

Respondent says that litigation having commenced between Law-

son and Floyd in Logan county, West Virginia, he was made a party to the suit.

Respondent lived then and lives now at Abington, Virginia, which is about four days' good travel on horseback from Logan C. H. His business and public duties were such that he could not give any personal attention to the suit.

For this reason and the further reason that he was connected by marriage with the plaintiff, respondent was willing to settle the said suit out of court.

The parties, Lawson and Floyd and respondent, met at Tazewell C. H., Va., in the latter part of July, 1871, and commenced negotiations for the final settlement and adjustment of all matters growing out of the suit. These negotiations lasted several days, and resulted in the compromise of 3rd of August, 1871, the terms of which
44 had been duly weighed and considered and were fully understood by all parties.

The plaintiff declared that this contract was highly agreeable to him, because the Logan property had been hung up so that he could not sell it, but now, by virtue of this arrangement, it was untied and he could make sales, pay the Lawson debt, and secure a surplus for himself, which he needed badly.

The contract made the payments due to Lawson in equal installments on 1st January, 1873, 1st January, 1874, and 1st January, 1875.

The payments being due at these times, the plaintiff was made agent for express purpose of making sales sufficient to meet them. Respondent did not desire to have — pay Lawson out of his own pocket, and was careful in endeavoring to impress this on the plaintiff as agent, and the latter then said nothing about a "due regard to the enhancement of the property," but gave the most positive promises and assurances that he could and would sell enough land to pay Lawson, and that respondent should have no trouble about it.

Respondent is advised that it is the duty of an agent to consult the interests and follow the instructions of his principal, but the plaintiff thought only of his own interest or his imaginary
45 interest and disregarded wholly the interests and wishes of respondent and his positive instructions.

Respondent removed the plaintiff, he thinks, in August, 1874 (he has not the exact date at hand), three years after the contract of August (the third) 3rd, 1871, after two of the payments had fallen due and after respondent had paid Lawson the sum of $4,184, and respondent insists that the plaintiff's own bill furnishes sufficient proof that respondent was right in removing him, because the bill says that at the time of his removal he was engaged in the effort to sell, "having a due regard to the enhancement of said property"— that is to say, that although he had been instructed to sell, so as to meet the payments as they fell due, and had agreed to do so, he was waiting an indefinite time till the property, in his opinion, was sufficiently enhanced in value, tho' his principal had been compelled to pay the larger part of the debt and was insisting on sales.

And respondent says further that the contract of third of August, 1871, and the power of attorney to said Floyd were, as already stated,

entered into at Tazewell C. H., Va., and were both duly acknowledged for record and delivered to the plaintiff, who lived in Logan county, West Virginia, to carry to Logan C. H. and have re-
46 corded. The plaintiff did carry both papers with him, and upon reaching Logan C. H. had the contract recorded, but withheld the power of attorney, and did not have it put upon record for, respondent thinks, about two years, and not until respondent had written to Logan C. H. and ascertained the default of the plaintiff and called his attention to it.

What motive the plaintiff had in the beginning for thus disobeying the express understanding of the parties and disregarding instructions respondent does not know. If it was done intentionally and for the purpose of obtaining any supposed advantage, of course it rendered him unfit to be respondent's agent, or, if it was mere neglect and forgetfulness, as it is quite probable, it made him very unsuitable for the transaction of any business which required attention and care. He never has at any time informed respondent of what he had done fully or in detail, as he ought to have done; and respondent further says the first letter or information of any sort that he received from the plaintiff on the subject of said agency and his doings thereunder was a letter dated 18th January, 1873, after the first payment had fallen due. This letter is made part of this answer, marked F 1 7. It will be observed that while the plaintiff in his bill alleges that before he was removed he had made sales amounting to 5,160, "most of which were, he says, made in 1871 & 1872," yet, in the letter of 18th Jan., 1873, he only claims
47 to have sold $2,200, of which one-third was due, as he said, 1st Jan., 1873.

Then, admitting that he had made all these sales, and that the money could be realized, he had only provided for payment of one-third of the sum respondent was bound for, tho' he had the means in his hands to provide for all, & was instructed to do it.

The said Floyd not having paid nor provided for the first payment, Lawson wrote to respondent demanding that he should pay the sum due, and on 18th —, 1873, respondent wrote to the plaintiff remonstrating with him for his failure and urging him to make such arrangements as would pay Lawson. To this letter respondent received a reply from the plaintiff, dated June 12th, 1873, and herewith filed as part of this answer, marked F 2 7. In this letter the plaintiff makes the astounding statement that "he did not know respondent was held for the debt." He had been a party to a written contract by which respondent became bound to Lawson for the debt. He had carried that contract to Logan C. H. and had it put upon record. He was acting as attorney-in-fact for the sale of land under that contract, and did not know that respondent was held for the debt. Such a statemont as this would of itself have justified the removal of the plaintiff without any further ceremony.

On the 22nd of July, 1873, the plaintiff wrote respondent
48 another letter in reply to one from respondent of date of June 24th, 1873. The sales stated in the bill to have been $5,160, and in the letter of 18th January, 1873, to have been $2,200, drop

down in this last letter to be only $2,100, of which $700 was past due. The letter is also filed herewith as an exhibit marked F 3 7.

It will be seen that the plaintiff, in his letter of 12th June, 1873, speaks of having put 17,000 acres of land upon the market and promised to pay Lawson out of the proceeds. Respondent is informed that it was out of the power of the plaintiff to sell the said lands, because he had previously conveyed them, and the title was not in him. His promise, therefore, to sell land that he could not legally sell was delusive and worthless.

It will be further noticed that in the letter of the 22nd July, 1873, the plaintiff says: "I have disposed of my stock in Warfield and have the promise of the money in sixty and 90 days. When I get it I will pay Lawson with great pleasure."

Respondent says that he is informed and believes that the plaintiff sold and assigned this identical stock to another person to pay or secure another debt.

On 15th August, 1873, plaintiff wrote respondent another letter announcing the sale of $300 or $400 of lots and renewing his promises to pay out of the Warfield stock and sales of wild lands,
49 promises which it is needless to say were never kept. This last letter is filed as part of this answer, marked F 4 7.

These are all the letters, so far as respondent recollects, received by the respondent from the plaintiff during the three years of his agency, and all the information of any sort he communicated to respondent on that subject. All the sales named in all his letters only aggregated, according to one of his statements, $2,400 and to another of $2,500.

The said A. Lawson collected on the 27th September, 1873, from James A. Sidebottom, $153, being the principal and interest of his purchase, and, as far as respondent knows or believes, this is all the money realized in any way from sales made by Floyd up to the time of his removal.

Respondent further represents that the said Floyd having failed to provide for the payment of the money owing to Lawson, and two payments being due, Lawson demanded that respondent should discharge the debt, and accordingly, in pursuance of his contract, respondent paid Mr. Lawson $1,500 on 10th July, 1874, and $2,684 on the 21st July, 1874, amounting together to $4,184. Respondent understands the plaintiff to admit in his bill the payment by him to Lawson of a portion of the debt, but he does not give the
50 sums, tho' respondent had furnished him with a statement of them. Not one cent of the money paid by respondent has been refunded to him. Respondent is also informed that on or about the 20th June, 1876, Mr. Lawson received from L. Justice $719.25, and on or about the 14th Oct., 1876, from James A. Nighbut, to whom James M. Payne has made a sale, about $450 or $500; but respondent knows nothing of his own knowledge of the transactions at Logan C. H., and, *and* as to them, refers to the answer of corespondents, Lawson & Payne. As to the charge in the bill that respondent's agent, James M. Payne, has ignored the sale or pretended sale to Louisa Buskirk (now Buchanan), respondent

denies it, & is informed and believes that the following is the true statement of that transaction:

At the time of the supposed sale made by the plaintiff as respondent's agent to Louisa Buskirk she was a married woman and incompetent to contract, and, even if the contract had been regularly made and reduced to writing and signed by the parties, it would have been absolutely void. But respondent is informed that the so-called contract was not in writing; that Mrs. Buskirk had no property of which the money could be made if there had been a judgment or decree against her; she not only was willing to surrender her
51 purchase, but refused positively to execute the contract. So far as plaintiff having any claim against respondent on account of this sale, it is only an added instance of the incompetency or infidelity of the plaintiff as agent—

For it is an attempt on his part to force his principal to take as payment for money advanced a claim void for the double reason that it was not against a married woman; that it was not in writing, and because she was not responsible and refused to comply with the contract, which could be enforced in no court, it is certain that respondent could never collect one cent from Mrs. Buskirk by process of law.

Respondent denies the allegation that Louisa Buskirk (now Buchanan) was competent and able to have paid the purchase-money, and he is advised and believes that the sale of the same lots made by James M. Payne was a fair and judicious one.

Respondent repeats that he knows nothing, of his own personal knowledge, of the transactions of Mr. Payne, his agent, but requires proof that Mr. Payne has been guilty of anything which prejudices the right of the plaintiff.

Respondent has never seen the "town plat," which the plaintiff complains so much has been ignored, and he does not admit that the plaintiff, if he made said plat, had any right under his
52 power of attorney to lay off a city and compel respondent to abide by & shape his sales accordingly, whether he thought it judicious or not. As to the charge of ignoring the town plat, Mr. Payne can answer for himself.

Respondent is advised that Henry Nighbut, to whom the plaintiff claims to have made a sale, is insolvent, being a poor, old colored man. He is also informed that Harvey Walker is insolvent, has left the country, and the contract with him was not in writing.

Respondent is informed that, with the exception of H. S. White, James W. Jackson, and James A. Sidebottom, the plaintiff made no written contracts with the persons to whom he claims to have sold.

Respondent denies the allegation in the bill that the plaintiff has paid the taxes on the land sold him by Lawson. On the contrary, tho' the plaintiff has had the occupation and use of the land and has received all the rents, issues, and profits, he has paid no taxes, as the respondent is informed, since the year 1872. The taxes not paid by the plaintiff, which respondent, through his agents, has had to provide for, are as follows, viz; 1873, $56.70; 1874, $61.57; 1875, $144.35; 1876, $72.83; total, $335.45.

The taxes of 1875 were erroneous, however, and were abated by the sum of $63.10, leaving a balance unpaid by Floyd of
53 $272.35; and respondent, tho' he removed the said Floyd from the position of agent, yet left him in possession and enjoyment of the land; but he took the profits and left respondent the taxes to pay. Said possession was not in anywise to interfere with the agency of Payne in the selling and disposing of the land.

The plaintiff alleges in the bill that the contracts (A & B) were procured by fraudulent representations. Respondent was not a party to the contract A, of December, 1857; this was between Floyd and Lawson alone; but this respondent was a party to contract B, of date August 3rd, 1871, and if the plaintiff means to charge him with making any fraudulent representations the charge is false. Respondent has lived all his life in Virginia. He has never been at Logan C. H. since the year 1852, and then only stayed over night on his way to another place; if he ever saw the land in controversy he knows it not, tho', perhaps, he did see part of it when he passed through Logan C. H. He made no representations of any sort in regard to the land, and it would have been very strange if he had to Floyd and Lawson, as he was the purchaser and they the vendors, and he knew nothing about it and *he* knew everything.

The plaintiff complains that if the land is sold in the
54 present condition of the financial affairs of the country it would necessarily result in a great sacrifice to him. Respondent has already been subjected to great sacrifice in consequence of the default and neglect of the plaintiff and the court is asked to remember that the financial crisis did not commence till September, 1873—more than two years after plaintiff was appointed respondent's agent. During these two years the country was prosperous and prices fair. The plaintiff was instructed and promised to make sales without delay.

If he had obeyed instructions and done his duty he could easily have sold to solvent persons, as respondent believes and as the plaintiff himself declared, at good prices, land enough to have paid every dollar of the Lawson debt; but he disobeyed, neglected his obligations, to the great injury of the respondent, and now asks the aid of a court of equity to give him the advantage arising from his own shortcomings and aid him in inflicting further loss, trouble, cost, and litigation upon the person whose interest he assumed to protect.

Respondent begs the court to observe that the land in controversey is described in the contract of December, 1857, between Lawson and Floyd, as "about one thousand acres," and in the contract between respondent, Lawson, and Floyd as follows, viz., "estimated to contain 1,000 acres," so that the plaintiff made the same representation substantially to respondent that Lawson made to him. If
55 Lawson practiced a fraud on the plaintiff, then the plaintiff practiced the same fraud on respondent.

The plaintiff asserts positively that Lawson had lived upon the land or in its vicinity from early boyhood and was the actual owner thereof, and must, therefore, have known that it did not contain 1,000 acres.

The same reasoning exactly would convict the plaintiff of defrauding the respondent and enticing him to assume the burden of his debt to Lawson and then trying to turn him over to recover his losses by litigating with Lawson, for the plaintiff states in his bill that after his purchase of December, 1857, he "took possession of said lands and entered upon the same and has ever since exercised acts of ownership thereover," &c.; then he had exactly the same means of knowing how much land there was as Lawson had. From the date of one contract to that of the other was nearly fourteen years, and that surely was as good as a century to ascertain the contents of a single piece of land.

The sums paid by the respondent for the plaintiff amount at this date, with interest, to over $5,000, and there is still a balance due to Lawson. The plaintiff's effort in this bill is to force respondent to look to Lawson for repayment. The plaintiff, before asking the court to arrest respondent in the collection of what plaintiff
56 admits to be due him, ought at least to have alleged & shown that the recovery from Lawson would be sufficient for the purpose; but it is quite sure that even if the plaintiff should recover from Lawson the utmost that he claims it will be wholly insufficient to pay respondent.

Respondent does not know whether there is any actual deficiency in the said land or not, & requires proof of it. The survey*or* refer-ed to by the plaintiff was wholly *ex parte;* it may not have embraced all the lands—may not have been correctly run nor correctly estimated.

But respondent does not think that he is at all interested in this question; it is wholly a matter between Lawson and Floyd; it grows out of contract made by them more than twenty years ago, with which respondent had nothing to do.

And respondent is advised that it is in the power of a court of equity to execute contracts between parties, but not to make them. The contract of the 3rd, August, 1871, authorized respondent to sell the land therein named to pay the debt due to Lawson. The plaintiff was a party to this contract, and does not allege that respondent practiced any fraud upon him, yet he asks the court to deny this respondent the right given him by that contract of selling the land and compel him to look to another mode of indemnity.

Respondent insists that the plaintiff, having the means of knowing the exact number of acres in the land, & being guilty of
57 laches if he did not know, and having under seal represented to an innocent man that the tract contained 1,000 acres by estimation, is estopped from denying that fact.

Respondent is advised that the contract of 3d of August, 1871, is final and conclusive and cannot be set aside or interfered with, but must be executed by the court. No ground for setting it aside is averred against the respondent or exists as to him. It was a compromise of an existing and pending suit, and that fact, if possible, gives it a greater and more binding and obligatory force, since compromises are favored in law.

Respondent has been put to heavy charges and costs by the fail-

ure of the plaintiff to do his duty and comply with his contract, & thinks the plaintiff ought to be required to indemnify him in this respect.

He is advised that he can obtain relief upon making a proper case by asking it affirmatively in his answer, without filing a cross-bill. To this end his prayer is that the injunction awarded may be dissolved & that he may have a decree for the money paid by him for the plaintiff, viz, $1,500, with interest from 10th July, 1874, till paid, and $2,684, with interest from 21st July, 1874, till paid, & also for the costs & charges he has been subjected to, including the taxes paid; that there be also a decree for such balances, if any, due A. Lawson as he is bound for; that to satisfy these sums the said
58 land, or so much thereof as may be necessary, be sold by commissioner of the court, & that he may have such other general relief as he is entitled to in the premises.

And having fully answered he prays to be dismissed hence with his costs.

JOHN W. JOHNSTON.

VIRGINIA, *Washington County,* } *To wit:*

I, L. T. Cosby, a notary public in the county and State aforesaid, do hereby certify that John W. Johnston, well known — me, personally appeared before me in said county and made oath the above answer is true to the best of his belief.

Given under my hand & seal of office this 10 day of January, 1879.

[L. S.] LOUIS T. COSBY,
Notary Public

The exhibit filed as part of the foregoing answer and marked "F 1 7," is in the words and figures, to wit:

CHARLESTON, *January* 18, 1873.

59 MY DEAR JOHNSTON: I received yours of the 1st yesterday. I sold, I think, about $2,200.00 of the lots—one-third is due the 1st of this month—to Lawson; these sales wer- made in strict accordance of the agreement with Lawson, and if he must have his money at once I think I can borrow it and pay him. I will write to him at once.

Lawson told me at the time of our agreement that as he had the debt fully secured that he could give time if it was desired. I *lul* that during this coming spring that I will be able to sell as much land as will pay him and give me as much money as I want. Lands adjoining mine have been disposed of to paying men, for timber alone, for $5 the acre, and I find that there is a growing desire to purchase timber & coal lands. I have 37,000 acres covered with the very best of oak and poplar timber and the very best of coal, canal, &c., and almost every tree on these lands can be floated to the
60 Tug river by the dames now being used by these new-comers. I am more than hopeful about these matters. When Lawson

is paid the $600 on the sales now due him, if he will *wate*, I think I can borrow the money — him in 60 or 90 days. I will write to him on the morrow — lete you know what he will do. There is some men who are going to put up a saw-mill at Logan C. H. this spring, which will enhance the value of my land there more than $10,000. I have put all the bottom lands in a town plat, and as soon as the people can get timber I can and will sell as much as will pay Lawson; you may rest assured of that. I do hope he will not harrass you about it. I will leave nothing undone to keep you from harassment by him. I hope I am making some friends in this State that will aid me for a short time, and all I want is a little time. If Lawson will give me that time I soon will know and write you. May God ever bless and protect you and yours is the continued prayer of your brother,

GEO. R. C. FLOYD.

Exhibit filed with said answer and referred to as marked,
61 "F 2 7," is in words and figures following, to wit:

LOGAN C. H., W. VA, *June* 12, 1873.

MY DEAR JOHNSTON: I received yours of the 18th of Apr. to-day. I am truly sorry that Mr. Lawson is so impertuning. I did not know that you were held for the debt. I am truly sorry that I have not been able to sell as much of the land as would pay Mr. Lawson. I did dispose of as much as could be witho-t giving it away. I did try to borrow the money to pay him. I could not get it. I have placed upon the market 17,000 acres of my land for sale, and I am assured that a sale will be made this summer or fall. The first money received shall be for Mr. Lawson. I would pay 20 per cent. for money to pay Mr. Lawson if I could get it. I will have to ask you the very great favor to aid me in this matter. I will secure you in any way that you may ask if you can in any way pay Mr. Lawson the first payment. I am sure that I will be able to pay the others as they fall due and pay you this fall, or sooner if I sell my lands or any part of them. There is a growing desire to purchase coal and timber lands, and I do assure you if I cannot get
62 one I will take such a price as will secure you. I feel that the day is near at hand that I will be relieved from all the troubles about money matters. Pleas- write to me and aid me all you can. We are all well. Give my love to all, and may God bless you all is truly the prayer of your devoted brother,

GEO. R. C. FLOYD.

The exhibit filed with said answer and referred to as marked, "F 3 7," is in the following words and figures, to wit:

LOGAN C. H., W. VA., *July* 22*d*, 1873.

DEAR JOHNSTON: I have received yours of the 24th of June. About $2,100 worth of lots have been disposed of; $700 has been due upon them since January last. I send you a copy, exact, of Lawson'- note to me. You will see by it that I am not due him as

much as he claimed at the settlement by $560. This will reduce the payments that amount. I see by his statement in the paper, as you will see, that he claimed 2,667.50 c-nts as the residue on the purchase here. I assure you that you shall not be harrassed long with this matter. I have disposed of my stock in Warfield and
63 have the promice of the money in sixty and 90 days. When I get it I will pay Lawson with great pleasure. I hope the new men at Warfield will be more successful than I have been; mine has been truly a most sad *sad* failure. I will take my little ones to Charleston and send John to Georgetown. Willie I will keep with me whilst at Charleston. All of them are well and growing very much.

I hope if I live that I will be able to aid greatly Father Quirk in building up a large school at this place next year. I find a growing desire among monied men to invest in these wonderful coal and timber lands. I will hold all I can for my children.

I must thank you and my angel sister Nickolter for your and her very great kindness to my dear little motherless child. I am truly proud of her great advancement. Do give my kind regards to the sister for these great attention- and kindness to her. John & Sallie reached home 3 days since. I was sorry that Patton did not come with them. Kiss sister for me and give my love to all, and tell Ben. that I expect of him to be a man in able things. May God bless you and yours is truly the wish of your affectionate brother,

GEO. R. C. FLOYD.

64 I have had your power of attorney to me recorded so everything would be done according to agreement.

Exhibit referred to as filed with said answer and marked "F 4 7" is in the following words and figures, to wit:

LOGAN C. H., WEST VIRGINIA, *Aug. 15th.*

MY DEAR JOHNSTON: I have disposed of 300 or $400 more of lots since my last letter and will continue to sell as fast as I can. I have not received my money from the New Warfield Co. as yet. I write to Barret & Dr. Black to-day, and as soon as I get my money I will pay Mr. Lawson.

I will be able to sell some of my wild lands in a few months. The desire to purchase is a growing one. This and next year there will be a railroad up the Louisa fork of Sandy river, and these new men at Warfield have had one surveyed to that place this summer. I hope the Co. will make a road to that point next year.

There is a little lawyer here by the name of Williams that is doing all he can to throw difficulties in my way touching the sale of lots here. He tells the people here that he will get the place to
65 sell, and then he will sell much cheaper than I have been. I wish, if you must have an attorney here, that you would not employ the dirty little dog Williams.

I think and hope that I will be able to pay Mr. Lawson by the sale of my Warfield stock and the lots and the 17,000 acres of wild lands. Lawson has done much to depress the sale of the lots at this

place, and his little following here — aid they can. I will, God being willing, succeed in my undertakings.

I will build up a great school at this place in a few years and I will educate all my little ones. All are well. Give my love to sister and all about you.

I am truly yours brother, GEO. R. C. FLOYD.

66 The separate answer of Anthony Lawson, referred to in the foregoing order of November 11, 1878, is in the words and figures following, to wit:

The Separate Answer of Anthony Lawson to a Bill in Chancery, Exhibited against him and others by George R. C. Floyd, in the Circuit Court of Logan County.

This defendant, without waiving any objections or exceptions to the manifest errors and imperfections in the plaintiff's bill, for answer thereto, says that on the 2d day of December, 1857, a contract was completed by & between the said plaintiff and himself, as hereinafter mentioned, to the tenor and effect stated and set forth in said bill, and a copy thereof is herewith filed as part of this answer, marked "Exhibit No. 1." It is true that the said plaintiff, as is usual with him in all such cases, failed to pay the purchase-money provided for by said agreement to be paid by him, and that this defendant instituted a suit in chancery in the circuit court of Logan county against the said plaintiff to recover said purchase-money and to enforce his vendor's lien on the land sold to said plaintiff
67 therefor. It is also true that all the matters in controversy in said suit were compromised between them by the agreement mentioned in the bill of the 3d day of August, 1871, a copy of which agreement is herewith filed as part of this answer, marked "Exhibit No. 2." It is also true that the said suit was in pursuance of said compromise, dismissed as stated in the bill. As to the allegations of the bill relating to the appointment of the plaintiff Floyd as the agent of the defendant Johnston, and his acts and doings as such, this defendant has but little knowledge of any sort, and therefore he refers to the answer of his codefendant, John W. Johnston, as a full and complete answer on that subject, and he adopts the said answer as part of this answer. As to the sales of land alleged by said plaintiff in his bill to have been made by him as such agent this plaintiff has no personal knowledge, except as follows: James A. Sidebottom, mentioned in the bill, paid to this defendant $153, the principal and interest due for the lot sold to him by said plaintiff. Larkin Justice executed to this defendant his note for
719.25, which was represented as the purchase-money of
68 a portion of the lands mentioned in said compromise sold to him by said plaintiff, and for which sum this defendant gave the said John W. Johnston a credit on the debt which he was bound by said compromise to pay for said plaintiff, and this is all that this defendant has ever received in any way from the sales of said lands made by said plaintiff; and this defendant, on information and belief, denies that the sales alleged by said plaintiff to have been made

by him as such agent were, as a general thing, made in such a way as to be binding in the purchasers, and he is informed and believes, and so charges, that no such papers or obligations are recorded in Logan county as stated in plaintiff's bill. If there are any such obligations of record as aforesaid let the said plaintiff produce them. This defendant has no personal knowledge as to the laying off of the land mentioned in the bill into lots, streets, and alleys by the said plaintiff, as the agent of the def't Johnston or otherwise, except that he has seen the same streets, and they are much longer and
69 wider and take up a much larger portion of said lands than there is any necessity for, and this of itself, if done with authority, was a sufficient justification, in the opinion of this defendant, for the removal of said plaintiff as such agent. As to the acts and doings of the said James M. Payne, as the agent of the said Johnston, this defendant knows but little of his own knowledge, and what he does know is in relation to a sale of a part of said lands, made by him to James A. Nighbert, mentioned in the bill. The said Nighbert executed to this defendant his note for $450 for the payment of a portion of the purchase-money of said land sold to him by said Payne, as such agent as aforesaid, and this defendant executed to said Nighbert his title bond therefor, but it is not true, as charged in the bill, that this defendant made him a deed therefor; and this defendant gave to the said Johnston a credit for the amount of said note on the debt aforesaid, and also for the said $153 paid by said Sidebottom. This defendant here refers to the answer of his said codefendant Johnston for a full
70 and complete answer to all the allegations of plaintiff's bill as to the sale made by him to Louisa Buskirk. This defendant knows that the said Louisa Buskirk was a married woman at the time of such sale, if it took place in 1871 or 1872, and he is informed and believes that she was still a married woman in 1873 and down to some time in 1874, and that she has had no separate estate out of which she could pay the purchase-money said land or any part of it; and this defendant is of the opinion, and so avers, that the price agreed to be paid for said land by said Nighbut was as much as the said land was worth, and that the sale was a fair one so far, at least, as the said plaintiff and the said Johnson were concerned.

And the defendant, further answering, says that it is doubtless true, as charged in said bill, that at the time of the contract of December 2, 1857, the plaintiff did not know the quantity of the said Logan lands sold to him by this defendant, and it is certainly true that this defendant did not then or at any other time since
71 and does not now know the quantity of said lands, but the fact is that the said plaintiff at that time knew as much about the town lots and all the bottom land so sold to him as this defendant did and as he knows at this time, and he does not pretend the contrary in his bill. This defendant, at the time of said contract, distinctly stated to the said plaintiff, in substance, that he did not know the quantity of land in the tract, and that he was unwilling to guarantee any particular quantity of acres in said tract, and hence it

was that said land was described in the contract as containing "about one thousand acres," which was understood by both the parties at the time and by the defendant Johnson, who drew the contract, not to bind this defendant to make good the said one thousand acres in case of any deficiency, and this defendant would not have signed the contract with any other understanding than this; and this de-
72 fendant expressly avers and charges that said sale was a sale in gross & not a sale by the acre, & that it was so understood by the said plaintiff himself at and before the final execution of said contract.

And this defendant, further answering, says that the chief value of the said tract of land at the time of said contract consisted in the town lots, with the buildings thereon, the bottom land, and the coal bank spoken of in the answer of the defendant Johnston, & that the back or mountain lands were then, as now, of but little value comparatively, except for the coal that may be in them, but which was not regarded at that time; that they are very steep, rough, and rugged, so much so indeed that this defendant was never over them, except to a very limited extent, in his life, and he has no knowledge of any other person having ever been over them, except to the same limited extent.

This defendant, further answering, denies each & every allegation of said bill which directly or by implication charges him with holding out any inducements or making any statements or representations so the said plaintiff as to the quantity of acres in said
73 tract of land to induce him, the said plaintiff, to enter into the said contract or otherwise; but, on the contrary thereof, this defendant avers the fact to be that the said contract for the sale of the said Tazewell lands to this defendant was first proposed by the said plaintiff to this defendant in the county of Tazewell in the month of April, 1857; that at the time and place aforesaid the said plaintiff proposed to sell to this defendant the said Tazewell lands for the price which was finally agreed on; to which proposition this defendant replied that, as he had already purchased about $44,000 worth of lands of the said plaintiff & his brother, B. R. Floyd, he could not make said further purchase at all unless he could put in his said Logan lands in part payment therefor; to which the said plaintiff at once replied that he would take the said Logan lands in part payment at the price of $10,000, and this, too, without any representations whatever by this defendant as to the quantity of lands he proposed to let the said plaintiff have;
74 but, in consequence of the title to said Waterford place being in John B. Floyd, the brother of the plaintiff, & not in the said plaintiff, and this defendant not having the same gushing confidence in the said plaintiff that said plaintiff says in his bill he had in him, & for several other reasons not necessary to mention, the said contract was not executed at that time; that some time afterwards this defendant visited the said John B. Floyd in the city of Washington in relation to said contract, and that said Floyd told him his brother, the plaintiff, had already written to him, stating the terms of the contract proposed on both sides, with which terms

he was satisfied, and to go on & make the contract with the said plaintiff, & he would ratify it & convey the said Waterford place to this defendant, which he afterwards did as agreed. He also stated that, in consideration of the large price which this defendant was to pay for his said Waterford place, he was perfectly willing to take said Logan lands at the sum of ten thousand dollars, as his
75 brother George (the plaintiff in this case) had offered to do; and this defendant, in fact, says and avers that at the time of said contract the said John B. Floyd was the owner of the said Waterford place mentioned in said agreement, and that the said plaintiff acted as the agent of the said John B. Floyd in all that he did in relation to said Waterford place in the making of this contract. This fact has always been suppressed by the said plaintiff for reasons entirely consistent with his own interest, but if he keeps on litigating in regard to said lands it may become prominent greatly to his disadvantage; and this defendant, further answering, says that the sum actually due to the said Ballard P. Smith & paid by this defendant in pursuance of said contract, was $8,667.50, instead of $8,410, as specified in said contract, & it will be seen by the terms of said contract that of the said $26,000 agreed to be paid for both tracts about $16,000 of the sum was for the Waterford place of the said John B. Floyd, when this defendant understood at the time that he could purchase the said Waterford
76 place from the said John B. Floyd for the sum of $10,000 in cash, and this defendant only agreed to said advanced price in consideration of the fact that both the said John B. Floyd & the plaintiff were willing to take his said Logan land at the price of $10,000, and in conversation afterwards with said John B. Floyd he told this defendant that he would have taken $10,000 in cash for the said Waterford place.

And this defendant, further answering, says that some time during the summer or fall of 1857 the said plaintiff came to the county of Logan & stopped at the house of this defendant at Logan Court-House, at which time the said A. S. Gray mentioned in said contract was also present; that this defendant then lived upon a part of the property sold to said plaintiff by said contract, and that then & there, on the said property & in view thereof, the terms of the said contracts, as they were afterwards reduced to writing, were
77 fully agreed upon, but that the said contract was finally executed and signed by the parties in Tazewell county, Virginia, on the day it bears date. This defendant cannot, of course, have any personal knowledge as to the kind, quantity, or quality of the confidence which the plaintiff had in his truth, veracity, and integrity, but he denies that there was any reason or necessity for the immense exercise of that confidence, whatever its degree might have been, in relation to any representation or statement of this defendant in regard to said Logan lands; and this defendant here expressly denies that he "knowingly and falsely" or otherwise represented to the said plaintiff that the said Logan lands "contained about one thousand acres" in any other way or manner or in any other sense than as hereinbefore stated. The said mountain lands, as before

stated, were very steep, and they came so near being perpendicular that the place where the back line of said lands ran could be plainly seen from the residence of this defendant in the town, and before the said contract was reduced to writing this defendant pointed out to the said plaintiff from his said residence where said line ran. As this defendant has already said, the sale of said land was a sale in gross and not by the acre; and he now further avers and says
78 that the sale of the said Tazewell lands to him by the said plaintiff was also a sale in gross & not by the acre; and although there is and has been for a considerable time a dispute between him and one of the adjoining owners as to the boundary line between them, which, if decided in favor of said adjoining owner, may reduce the said lands below the quantity named in said contract, this defendant never thought of having any recourse against the said plaintiff or the said John B. Floyd for such deficiency.

This defendant expressly denies that he in any way whatever, either by request, inducements, representations, or otherwise, induced the said plaintiff to enter into said contract, but that on the contrary thereof the said contract was first proposed as aforesaid by the said plaintiff, and it was never thought of by this defendant until it was so proposed by the plaintiff, and this defendant would never for a moment have entertained it if the said plaintiff had refused to take his said Logan land. The said plaintiff, as stated in his bill, was financially embarrassed at the time of and before said contract. He had purchased the said Smith lands at a judicial sale and failed to pay for them, and the said contract was a necessity to him and not to this defendant.

By it he got his debt to Smith paid off and discharged, as well as the debt to A. S. Gray, owing either by him or his brother John B. or both, this defendant does not remember which.

79 This defendant, further answering, says that the said plaintiff did take possession of said Logan lands under the said contract and held the same down to the time of the making of the said second or compromise contract on the 3rd of August, 1871, thereunder; that at the time of the making of the said first contract this defendant had been the owner of the said Logan lands or the most of them for about ten years, and at the time of the said second contract the said plaintiff had been the ostensible owner of the said lands for nearly 14 years, and therefore had had nearly 4 years more time in which to ascertain the real quantity thereof than this defendant had while he owned them.

This defendant has no personal knowledge as to the alleged survey of said lands mentioned in the bill. The first he ever heard of it was the reception of the letter of the said plaintiff, dated March 6, 1876, which is herewith filed as part of this answer, marked "Exhibit No. 3." This letter he supposes is the one referred to in the plaintiff's bill, and is the only letter he ever received on the subject. It is true that this defendant made no reply to it, and did not comply with the very modest request contained in it for reasons which will be obvious upon the reading of it. If any such survey as is mentioned in the bill has been made it was without notice to this

defendant, and he is not bound by it & he does not admit its correctness; but even if correct it gives to the plaintiff, as this defendant is advised and believes and so charges, no right to come
80 into a court of equity and stay the collection of the debt due to the said John W. Johnston and to this defendant or to have an abatement in the amount which the plaintiff bound himself by his contract and the said Johnston bound himself by his contract to pay for the said land; but even if he could claim an abatement of the said sum he agreed to pay & the said Johnston agreed to pay it would be but a trifle, as the deficiency, if any exists, is in the mountain lands, which are worth next to nothing, as before stated. It is true that this defendant lived upon said lands and in its vicinity from the time he was 13 or 14 years old till the time of said first contract, but it is not true that he was the owner thereof until after the death of his father, in 1847.

This defendant is informed by James M. Payne, who is now the agent of the defendant, John W. Johnston, that under the representations of the said plaintiff that he, as the former agent of said Johnston, had made valid sales of portions of the said Logan lands to James M. Jackson, Simpson Ellis, Thomas Avis, H. S. White, William Chafin, Henry Nighbert (colored), and J. B. Buskirk, he has commenced suits in the circuit court of Logan county in the name of the said J. W. Johnston, plaintiff, against each of them to enforce the specific performance of said contracts and to enforce the vendor's lien on the lands sold for the payment of the purchase-money by a sale of the lands sold to them, if necessary, in
81 which suits he has made the said plaintiff a merely formal party, without asking any sort of relief against him, and in which he has also made this defendant a party defendant. How suits on contracts made by the said plaintiff as the agent of said Johnson to enforce said contracts by his principal without making any claim in any of the said suits against the said plaintiff could have been brought for the purpose or intention of vexing, harrassing, or impoverishing the said plaintiff passes the comprehension of this defendant to understand, particularly when said suits are brought to recover moneys which his principal actually paid for said plaintiff; but this defendant denies that he had anything whatever to do with the bringing of said suits or either of them. This defendant is further informed by the said Payne that since the bringing of said suits he has not been able to find any contract in writing signed by any of said purchasers, or any notes executed by them, or any of them, for the purchase-money of the lands bought by them, and that the only written contracts or memoranda which he has been able to find are memoranda made and signed by the said Floyd, the plaintiff, as agent as aforesaid, as to the sales made to White and Jackson.

He is also informed by said Payne that the said J. B. Buskirk, after the bringing of said suit against him, acknowledged his
82 liability under the contract with said plaintiff and executed his note for the purchase-money, and that he thereupon dismissed the suit against him; and this defendant, further answering, says that he is wholly unable to see how or by what right the plain-

tiff can come into a court of equity and enjoin the prosecution of suits upon contracts made by him as the agent of the said John W. Johnston, brought by his said principal to reimburse himself for money which he, Johnson, has paid for the said plaintiff, particularly when the purchasers themselves do not complain.

He says in his bill that at the time of the institution of these suits there was a sufficient quantity of said land unincumbered by prior liens (by which the plaintiff probably means unsold) "out of which to enforce any recovery" (by which the plaintiff probably means sufficient to pay the moneys due to said Johnson & this defendant) "without interfering and entirely disregarding sales of land which this plaintiff had made as aforesaid." Even if this was true, with what sort of face can the plaintiff come into a court of equity and ask that his sales as agent shall not be enforced by his principal and that his principal instead of enforcing sales already made by him as agent shall go on and sell the balance of the land & get his pay from them whether he wants to or not?

No doubt if said Johnson had attempted to make the
83 money he has paid and is compelled to pay for said plaintiff out of the residue of said lands without resorting to those sold by the plaintiff as aforesaid the plaintiff would have rushed into court with the same fuss and fury he now does to compel him to proceed first against the lands so sold as aforesaid for his pay before resorting to those unsold; and that this defendant is right in this assertion the court has only to look to another part of his bill in which he indulges in his usual strain of complaint that the said James M. Payne is proceeding to sell said other lands, which sale he asks the court to enjoin, and which the court does enjoin at his request, so that no matter what way the said Johnston tries to obtain the repayment of the money which he has been compelled to pay and will be compelled to pay for his unfaithful agent, that agent asks that he be enjoined & restrained from doing so, because it will be prejudicial to his interest; and as to the value of the said Logan lands at the time of said first-named contract this defendant, further answering, says that even if the allegation of the plaintiff's bill as to the number of acres thereof are true, and this plaintiff had known this fact at the date of said contract, he would not have sold or disposed of the same for one dollar less on that account than he would have done if he had known the tract to contain 1,000 acres for
84 the reason before stated, that the mountain lands are of little or no value, and he would have sold the same in either event with reference to the boundary and not to the quantity, as he did sell them in this case.

Now, as to the real value of said land, this defendant will state the following facts:

After said contract was finally executed as aforesaid the said plaintiff sold to Isaac Morgan 50 acres of said land at the lower end of the tract, binding on the McDonald line and mostly hill land, for $800 or $850, this defendant is not certain which, and this defendant is informed that he reserved the minerals in said 50 acres in said sale. He also sold to Urias Buskirk and *als.* Nos. 11 & 12, in the

town, for $700, and this sale was after all the buildings on said lots had been burned down, which occurred during the war. He also sold to John V. Buskirk a small lot for about $50. This defendant is informed and believes that said plaintiff sold $300 worth of timber from the said lands & received the money. The houses and outbuildings on said lots Nos. 11 & 12, and which were burned as aforesaid, and the said lots together were worth a large sum of money—certainly not less than $2,000. The value of lot No. 10 in said town, with the store-house, lumber-house, salt-house, carriage-house, and shop thereon, was certainly not less than $1,000;
85 and this defendant is informed and believes and so charges that said plaintiff now asks $1,000 for said lot No. 10 without any buildings thereon, they having also been burned. There were other buildings on the said lands of the value of at least $800. The bottom lands in and adjoining the town had a market value of at least $100 per acre, and now one of the sales made by the said James M. Payne, of which the said plaintiff complains in his bill, is the sale of two acres of the least valuable of said bottom lands to John V. Buskirk for $200. This defendant does not know, and the plaintiff does not state in his bill, the quantity of said bottom lands, but this defendant is satisfied that there is not less than 20 acres thereof. There is also a small bottom just below the town of not less than, as he believes, *than* 7 or 8 acres, and the whole amount under fence between the road and the river, of which a part is hill land, is not less, he is satisfied, than 14 acres. Seven acres of this land, as this defendant is informed by the said Payne and believes to be true, have been sold by said plaintiff for $700, and the residue within said fence for $290.

The value of lots Nos. 8 & 9 is at least $300, and the value of said coal bank was at least $500 as a coal property. The plaintiff has also sold to Larkin Justice about 28 acres of said land,
86 being nearly or quite all hill and mountain land, for $800, reserving the minerals, as this defendant is informed. He also sold to H. S. White 20 acres of the hill land just back of the town & extending up into the mountain, reserving the minerals, for $650, and the purchase of the said James M. Jackson was two small lots 100 feet square each, as defendant is informed, of the said bottom lands for $350. The lot which the said plaintiff claims in his bill to have sold to J. E. Ricketts for $400 is also a part of said bottom lands, and said lot is also, as defendant is informed, 100 feet square. By reference to the plaintiff's bill it will be seen that he claims to have made sales, as agent of the defendant, John W. Johnston, of portions of said lands amounting to $5,160; deducting from this amount the $800 for the sale of Louisa Buskirk leaves $4,360 as the amount of said sales, and the amount of lands so sold by him, according to his own account, was about from three to four acres of the bottom at the town and from eight to nine acres in the bottom below the town and about 43 acres of the hill and mountain lands; add to this the 50 acres he sold to Morgan, the two lots he sold to Urias Buskirk, about one acre, and about one-half of an acre he sold to J. V. Buskirk, makes the whole of his sales, both on his own ac-

count and as the agent of said Johnston, amount to about 106 acres in all, and of which number of acres about 83 acres *is* hill and mountain, in most or all of which the said plaintiff has reserved the
87 minerals as aforesaid. For this 106 acres his said sales amount to $6,000 and upwards, according to his own showing, and this, too, after all the buildings on the property had been destroyed by fire, and he still has lots Nos. 8, 9, & 10 in the original plan of the town, the most valuable of all the lots sold him, and about sixteen acres of the bottom lands at and adjoining the town, a considerable portion of which is the most valuable of all the said bottom lands sold him, and about 470 acres of the hill & mountain lands, even if his survey thereof is correct, which defendant does not know and does not admit.

And this defendant, further answering, calls the attention of the court to the following facts illustrating the singular and remarkab-e phases of this case: The first contract was made more than 20 years ago, and by it the sum which the plaintiff was bound to pay this defendant was $2,667.50. Under the contract he took possession of the property & held and enjoyed it to his own exclusive use until the making of the second contract, when he continued in such possession as such agent until he was displaced, as stated in his bill, and the said James M. Payne appointed in his place, but he has never been deprived of the use of the property and still has the use of it. During all this time the plaintiff has never himself paid one dollar towards the said purchase-money or its interest, but has used
88 and appropriated to his own use the rents and profits of the land, the proceeds of the sales of timber, and all the purchase-money, whatever it was, received from the said Morgan, Urias and John V. Buskirk, and the only moneys ever realized by this defendant on the purchase-money & interest of the said land, except what has been paid him by the said defendant Johnston, was the sums received by him arising from the sales made by said plaintiff as the agent of said Johnston, as hereinbefore stated; and this defendant, further answering, says that the defendant John W. Johnston and this defendant are both non-residents of this State and are residents and citizens of the State of Virginia, and that the plaintiff, George R. C. Floyd, is a resident and citizen of the State of West Virginia; that all the other parties to this suit are residents and citizens of the State of West Virginia; that the defendant, James M. Payne, has no interest in this suit and is only a formal party therein, and that the matters in controversy in this suit are wholly between the said John W. Johnston and this defendant, on the one side, and the plaintiff on the other, who are citizens of different States as aforesaid.

And, having thus fully answered, this defendant prays that the injunction heretofore awarded in this cause be dissolved, and that he be hence dismissed with his costs.

ANTHONY LAWSON.

89 STATE OF WEST VIRGINIA, *Logan County,* } *ss:*

Anthony Lawson, the defendant named in the foregoing answer, being duly sworn, says that the facts and allegations therein contained, so far as they are stated on his own knowledge, are true, and that so far as they are stated upon information he believes them to be true.

ANTHONY LAWSON.

Taken, sworn to, and subscribed before me this the 25th day of April, 1878.

JOHN CHAFON,
Clerk Cir. Ct Logan Co., W. Va.

This answer is excepted to—

1st. Because it is argumentative.

2nd. Because it gives the declaration, of John B. Floyd, James M. Payne, and others.

3rd. Because it is not addressed to any court.

4th. Because it is unnecessarily voluminous.

QUARRIER AND WATTS,
Counsel for Complainant.

The contract filed with the answer of A. Lawson and marked "Exhibit No. 1" is hereinbefore copied on page 25 *et sequitur.*

90 Exhibit No. 2, with Johnson's answer, is hereinbefore copied. See pp. 27 to 30, inclusive.

Exhibit "No. 3" is *is* in the following words and figures, to wit:

LOGAN COUNTY, WEST VA., *March* 6, 1876.

Mr. A. Lawson.

DEAR SIR: I have had the land you sold me at the court-house surveyed, as called for in your title bond to me. You sold me one thousand acres. There is not quite six hundred. I wish you would repay Mr. John W. Johnston the money he has paid you, as he is pressing me for it, and the ballance you will be due me we can settle when you come down to our court in April. I have no news.

I am, as ever, yours truly,

GEORGE R. C. FLOYD.

P. S.—I will send you a copy of the survey if you desire it.

91 The separate answer of James M. Payne, mentioned in the foregoing order of November 26th, 1878, is in the words and figures following, to wit:

Separate Answer of James M. Payne to the Bill of Complaint of G. R. C. Floyd, Filed in the Circuit Court of Logan County against A. Lawson et als. and Removed to the District Court of the United States for the District of West Virginia.

To the Hon. John J. Jackson, Jr., judge of the district court of the United States for the District of West Virginia:

The defendant, now and at all times hereafter, saving to himself all benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material for him to make answer to, answering, says that it is true that his codefendant, John W. Johnston, employed defendant as his agent and attorney some time in the winter of 1875–'6 to sell certain lands in the county of Logan, in the State of West Virginia, or so much thereof as would be nec-
92 essary to reimburse said Johnston the moneys he had assumed to pay and had paid for the said Floyd, being the same lands mentioned in the bill of complaint, and also to collect, by suit or otherwise, the purchase-money due on lots and parcels of land which said Floyd, the plaintiff, has, as said Johnston's agent, previously sold, and to do anything else which the defendant deemed advisable to carry out the agreement entered into on the 3d day of August, 1871, between the said plaintiff and his codefendants, John W. Johnston and Anthony Lawson; that pursuant to such employment defendant, while in Logan county, soon after he was so employed, had a conversation with the plaintiff concerning the sales that said plaintiff, as agent as aforesaid, had made; that said plaintiff said that he wanted all the contracts he, as such agent, had made, enforced, and referred defendants to the records in the clerk's office of the county court of Logan county for the evidence of the sales which he, said Floyd, had made.

This defendant, further answering, says that upon an examination of the records of said office he found no evidence of any sales made by the said Floyd as such agent except a sale to James a Side-
bottom of lot No. 8, on the plat known as "Floyd's Map" of
93 the village of Aracoma; of lots Nos. 9 & 12 to J. M. Jackson; of three acres to Anderson Blair and Julia Y. Morgan; of one tract of ten acres to H. S. White, and another tract of ten acres to same. The prices to be paid were, by Sidebottom, $150.00; Anderson Blair or Julia Y. Morgan, $300.00; J. M. Jackson, $450, and H. S. White, $650.00, and the mineral interest in the said two tracts of ten acres each was reserved. There was no contract of any kind or character of record that this defendant could find, and he searched diligently of any sale to Louisa Buchanan (or Louisa Buskirk), J. B. Buskirk, Simpson Ellis, Larkin Justice, Thomas Avis, John Chafin, William Chafin, J. E. Rickets, Henry Nighbert, or Harvey Walker, and if there exist any written contracts for these sales such contracts have never been seen by this defendant; but, on the contrary, the said J. B. Buskirk, Simpson Ellis, Thomas Avis, John Chafin, J. E. Rickets, and Henry Nighbert all assured this

defendant that no written contracts had ever been made for the respective sales to them. The matter was closed with Larkin Justice soon after this defendant's appointment as agent, and the balance due, or all the purchase-money, whichever it was, was credited by A. Lawson on John W. Johnston's bonds or notes, and it was agreed that the amount, whatever it was, should be paid directly by said Larkin Justice to the said A. Lawson.

94 This defendant, further answering, says that Louisa Buskirk *alias* Buchanan repudiated the contract of sale to her by the said G. R. C. Floyd, agent as aforesaid, and refused to carry it out; that said Louisa Buchanan, as this defendant was informed and verily believes, at the time the said sale is alleged to have been made, was a married woman, the lawful wife of Uriah Buskirk, and that she had no personal or real estate of her own, or any separate estate of any character, and that the sale to her was such an one as could not be enforced, but was void; that Harvey Walker was, at the time of the pretended sale to him, if any was ever made, *was* insolvent and has since then left the State; that Wm. Chafin refuses to carry out his contract and is insolvent; that Henry Nighbert (who is an old colored man) has erected a log cabin on his lot and is insolvent; that J. E. Rickets, — took possession of his lot so purchased of the said Floyd, agent as aforesaid, has built but not completed a frame dwelling and stable upon it and is now insolvent.

This defendant, further answering, says that it is true that, as agent as aforesaid, he sold to James A. Nighbert certain lots in the village of Aracoma for $500, $50.00 of which was paid to this

95 defendant in cash for his commission on the sale, and for the residue a note for $450.00 was executed by the said James A. Nighbert to the said A. Lawson, which sum was at the time of the sale a reasonable and fair price for the same, and it is also true that he, as such agent, sold to Larkin Justice a part of the land in controversy, being 7¼ acres, for the price of $290. Said sale was made on the 14th of Oct., 1876. The purchase-money was to be paid eighteen months after date, with interest from date, and J. V. Buskirk was and is security for the purchase-money. This defendant executed an agreement with said L. Justice to that effect, which said agreement was delivered to said Justice, and took from said Justice & Buskirk their joint and several bond for the payment of the money to said John W. Johnston. Said bond is herewith filed, marked "Exhibit No. 1," as part of this answer; but the said 7¼ acres of land did not comprise "all the remaining town lots in the lower bottom, there being ten or twelve of the same," as the plaintiff in his bill has falsely alleged, but only a small portion of the bottom, and that principally swamp, and the residue a narrow strip of hill land, there being not a single lot embraced in the said boundary laid down upon the said "Floyd Map," said Floyd having sold nearly all of the valuable part of the lower bottom to other parties, and that, too, regardless

96 of any streets and alleys.

This defendant, further answering, says that it is true that he, as such agent, has sold to John V. Buskirk a part of the land in controversy, being three acres, more or less, within a certain bound-

ary set out and described in the agreement made and entered into between him and the said John V. Buskirk, at the price of $100 per acre; that the said lot or parcel of land is adjacent to the town of Aracoma, chiefly swamp, and does not embrace or include any of the lots laid down on the town plat called the "Floyd Map" or "Floyd Plat;" that said "Floyd Map" not being of record, but in the possession of the said Floyd or his agent, H. S. White, the said Buskirk in surveying the same made an error in running the line of Coal Hollow street and included a part of said street in his survey, which part of said street this defendant never sold to said Buskirk, and which he, said Buskirk, is willing to surrender whenever the line is correctly run—said street having never been opened; and this defendant took from the said J. V. Buskirk his and L. Justice's joint and several bond for $300, payable six months after date, with interest from date. Said sale was made on the 14th
97 October, 1876, and the said bond is herewith filed, marked "Exhibit No. 2," as part of this answer; and this defendant denies that such sale affects the value of any lot adjoining thereto in such way as to impair it, but this defendant says the price was a very fair and reasonable one.

This defendant, further answering, says that it is true that suits have been instituted by his codefendant, John W. Johnston, in the said circuit court of Logan county, West Virginia, against some of the purchasers of lots and parcels of lands, to wit, against H. S. White, Thomas Avis, Henry Nighbert, Simpson Ellis, J. V. Buskirk, and Wm. Chafin, for the purpose of obtaining specific performance of their respective contracts, and of selling the lands sold to them to satisfy the purchase-money respectively due for the same.

The suit against J. V. Buskirk was compromised by his paying the costs and executing to said John W. Johnston his bond for the purchase-money. Said bond bears date April 27, 1877, and is for the sum of $250.00, including principal, interest, and costs, on his purchase of lot No. 7, in the village of Aracoma. Said bond is herewith filed, marked "Exhibit No. 3," as part of this answer. Said J. V. Buskirk has paid about $100 of taxes due on the land in controversy, and is, by agreement with this defendant, acting as agent as aforesaid, entitled to a credit for the same on his said
98 bond.

And this defendant denies, as absolutely false, that this defendant was "contriving and intending to vex, harrass, and impoverish the said plaintiff" by the institution of the said suits, but, on the contrary, was doing what this defendant believed to be the only thing that could be done to promote the interest of the plaintiff, as well as that of his codefendant, John W. Johnston; and besides, the said Floyd, the plaintiff, insisted on the enforcement of the contracts of sale which he had made, but now seems to think that this defendant should not sell any more of the lands, because he claims to have sold enough to pay off what he owes under his said contract with said A. Lawson and John W. Johnston of 3d August, 1871, filed as Exhibit B with said plaintiff's bill, and that this defendant should not prosecute any suits to collect the money due on the sales

which the plaintiff himself has made as agent of said Johnston, because there remains enough of the land unsold to pay off his said liability to said Johnston.

This defendant, further answering, says that he has no knowledge of the allegations in the bill concerning the procurement of the contracts filed as Exhibits A & B; that he has no personal interest whatever in the subject-matter of this suit, the only interest
99 or connection with it being that of agent and attorney for the said John W. Johnston, his codefendant, and as attorney for his codefendant, Anthony Lawson, and that his only object in selling the lands to Jas. A. Nighbert, J. V. Buskirk, and L. Justice, so far as the same concerned the plaintiff, and in instituting the suits aforesaid, was to perform his duty as the agent and attorney of his principal and client, John W. Johnston, in carrying out the letter and spirit of the said agreement of 3d August, 1871.

And now, having fully answered all of the said bill that he is advised it is material for him to answer, this defendant prays hence to be dismissed with his reasonable costs in this behalf expended; and he will ever pray, &c.

J. M. PAYNE.

James M. Payne appeared in open court, and on oath says that allegations and facts stated in the foregoing answer, so far as stated on his own knowledge, are true, and so far as stated on information and belief he believes them to be true.

Nov'r 27, 1878.

Teste: JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

100 And at another day, to wit, at a district court of the United States for the district of West Virginia, holden at Charleston, on the 3d day of June, 1879.

This day the defendants, A. Lawson and John W. Johnston, gave notice to the plaintiff that on the first day of the next term they would move the court to dissolve the injunction in this cause upon the bill and exhibits therewith filed, answers of said defendants and exhibits therewith filed, and upon the depositions of witnesses.

101 The depositions taken and filed in the cause are in the words and figures following, to wit:

HENRY P. CLARK, a witness of lawful age, having been by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, answers and deposes as follows on behalf of the complainant, George R. C. Floyd:

1st question by J. W. KENNEDY, Esq. State your name, age, residence, and occupation.

My name is Henry P. Clark; my age 60, and I live in Logan county, West Virginia; my occupation a lumberman.

2d by same. Please state whether or not you are acquainted with lots 8, 9, 10, 11, and 12, sold by Anthony Lawson to George R. C. Floyd by contract dated 1857; if so, how long you have been acquainted with said property.

Answer. I might be acquainted with the ground, but not by the number; I mean by it I could not locate them, and don't know them by the number.

3d by same. Do you know the lots upon which Mr. Lawson's dwelling-house and store were at the time of said sale; and, if so, how long?

Answer. Yes, sir; I know where they stood; I have known them something over 30 years.

4th by same. How long had you been acquainted with said lots at the date of said contract of 1857.

Answer. About 15 years, I suppose.

5th by same. State what you would regard to be the value of said property at the date of said contract.

(This question objected to by the defendant Lawson.)

102 Answer. I think they would be worth $3,000.

6th by same. Please state what you embraced in your above valuation.

Answer. It was the land which is now explained to me as the whole of the 5 lots.

Cross-examined by J. H. FERGUSON, Esq.:

1st question. Do you mean to be understood as saying that the value of the 5 lots, with all the buildings and improvements thereon, at the date of the contract between Lawson and Floyd, in 1857, was, in your opinion, not more than $3,000?

Answer. That is what I valued it at; of course, that is what I thought.

2d by same. Did you ever examine the buildings on either of the lots so as to form any opinion as to their value from an examination?

Answer. By daily observation for years I formed my opinion.

3d by same. I repeat the above question because it is not answered.

Answer. I never went and examined them inside and all over to fix a value upon them.

4th by same. Did you ever examine them at all, inside or outside, with a view of fixing their value for any purpose?

Answer. I never did.

5th by same. What was the size of the dwelling-house?

Answer. I could not say the size of it.

6th by same. How many rooms were in it?

Answer. I have been in Mr. Lawson's house often, but I do not remember the rooms that were in it.

103 7th by same. What was the shape of the house?

Answer. The house was longer than wide, and, I think, a story and a half or two stories high; I think a story and a half.

8th by same. Is that your best recollection of its height?

Answer. I think it was a story and a half, tho' it may have been a two-story house; I don't just remember.

9th by same. Did it have any L to it?

Answer. I am not certain about that.

10th by same. State what kind of a house it was.

Answer. It was of wood; it was weather-boarded; but I don't know whether it was a frame house or a log house weather-boarded.

11th by same. How was it finished on the inside?

Answer. I think it was ceiled.

12th by same. How many chimneys had it and what kind were they?

Answer. I don't remember.

13th by same. According to your recollection, about what was the length of the house in its largest part?

Answer. From my recollection, it would be, say, near 40 feet.

14th by same. What is your recollection of the width of the house?

Answer. Well, I could not give it a width; I could give an opinion; I think it would be 16 or 18 feet wide, from my recollection of the house.

15th by same. Was it painted inside or outside, or both?

Answer. It was painted on the outside; I don't remember how the inside was.

104 16th by same. Was it papered on the inside?

Answer. I don't remember that.

17th by same. Did the house have any porch or portico to it?

Answer. It had a portico.

18th by same. Do you remember how the portico was covered—with metal or shingles?

Answer. No, sir; I can't remember.

19th by same. What other buildings and improvements were in the lots between the street and the river—I mean lots Nos. 11 and 12?

Answer. I don't know anything about the number of the lots, but I remember the ground. There was a house that stood at some little distance between Mr. Lawson's dwelling-house and the river, and there was a well-house and some other buildings that I can't describe just how they was arranged, and I can't say what the buildings were.

20th by same. Describe the house you say stood between the dwelling-house and the river—the size of the house, kind, number of rooms in it, and for what purpose used.

Answer. I could not describe it; I think it was used for colored people; I did not visit that house, and cannot describe it and cannot give the size of it, nor number the rooms in it.

21st by same. Can you give any idea of its value? And, if so, state it.

Answer. I don't know that I could fix a correct value to it.

22d by same. Can you give any idea of the number of the
105 other buildings on those lots besides the dwelling-house and the negro house? And, if so, state their number.

Answer. There were some other buildings, but I cannot give their number or dimensions.

23d by same. If you can give any idea of their value give it.

Answer. I cannot give any value.

24th by same. Was there a cellar under any of the houses?

Answer. I have forgotten whether there was or was not.

25th by same. Do you know anything about a barn and stable or either being in either of these lots? And, if so, state all about it—its size, &c.

Answer. I don't think the barn or stable was upon them or either of them next to the river.

26th by same. Do you know anything about the well—the depth of it—how it was fixed or its value?

Answer. The well stood a little to the right of Mr. Lawson's house with a well-house around it; the depth I don't know; as far as I could see from the top, it was stone inside. I could not put a value to it.

27th by same. What quantity of ground was there in those 2 lots between the street and the river, as nearly as you can tell?

Answer. I suppose there was about one acre or nearly that.

28th by same. In giving your estimation of the value of the lots 8, 9, 10, 11, and 12, and of the buildings and improvements thereon, in your direct examination, what sum did you include for the value of those two lots 11 and 12 independent of the buildings and improvements?

Answer. According to my estimate, which was made altogether, but, to divide it, I would think that $200 was their value.

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29th by same. What was your estimation of lot number 10?

Answer. I did not make any separate estimate, but I would put what is called 8, 9, & 10 altogether at $200.

30th by same. Did you have any knowledge whatever in 1857 and for the period of 10 years prior thereto of the market value of lots at Logan Court-House, then called Aracoma?

Answer. I bought lots here during that time; I bought one of Mr. Lawson which lay fronting the public square next to the hill; I bought a lot, supposed to be 2 acres in it, at the upper end of town of Judge Ward.

31st by same. What was the size of the lot that you bought from Col. Lawson and what price did you give him for it?

Answer. As near as I know, it was near 3-quarters of an acre. My recollection don't serve me just what price I did give him, but it was in the bounds of from $300 to $400 with the house and little fixtures upon it.

32d by same. Were not lots 8, 9, 10, 11, and 12, in 1857 and before and since, regarded as the choice lots in the town?

(Question excepted to by complainant.)

Answer. The part that is called 9 and 10 was always considered the choice ground of the place.

33d by same. Were not lots 11 and 12 also considered very choice lots, or do you know?

Answer. I could not say, for they were occupied, and I never heard them spoken of in that connection.

34th by same. Which do you consider the most valuable,
107 the ground, I mean, independent of the buildings, lots Nos. 11 and 12 or the lots below there running down to where James A. Nighbert lives, independent of the buildings on them?

(Excepted to by complainant.)

Answer. Would consider 11 and 12 the most valuable.

35th by same. Did you ever know about the year 1857, or for a period of 10 years before that time or since that time, at other than forced sales, any lot of the size and character of 8, 9, 10, 11, or 12, and so situated as to be ranked among the choice lots, to be sold as low as $100 or any price near that sum? And, if so, state who sold it and who bought it.

(Excepted to by complainant)

Answer. I consider that the lot that Mr. Lawson sold me would not cost that much or over; I don't know of any others, if you confine it to the choice lots; I don't know of any others selling.

36th by same. When did you buy the lot of Col. Lawson, and who now occupies it?

Answer. I don't remember the date, but it was before the date of the contract of Col. Floyd with Lawson; John Buskirk now occupies it, and his house and store-house are on it.

37th by same. At the time you bought it was there any public road or street leading into the town from below except that between lots Nos. 10 and 11?

Answer. I don't think there was; at this time there is a street leading up to it and by it from below.

38th by same. In your estimation of the value of the lots
108 and buildings at $3,000 above spoken of, how much do you include as the value of the dwelling-house occupied by Col. Lawson in 1857?

Answer. From $1,200 to $1,500.

39th by same. How much did you include for the other house that stood between the dwelling-house and the river?

Answer. I estimated that at from $200 to $300.

40th by same. How much did you include for the well and well-house?

Answer. I suppose about $60.

41st by same. How much did you include for the other buildings that you say you can't describe?

Answer. When I made my estimate I estimated them in with the other buildings, and I could not fix any particular value to them.

42d by same. What buildings and improvements were on the lots known as 8, 9, and 10 in 1857, at the date of the contract between Floyd and Lawson?

Answer. I could not say what lot the barn was on, but the store-house was on the ground that I have described, and under the

same roof a salt-house, or warehouse rather. I don't know of any other buildings on the lots; there might or might not have been a coal-house; but I don't know that there was.

43d by same. Give the size, number of rooms, and character of the store-house.

Answer. I don't remember the size. It was a wood-house. I could not say whether it was a log or a frame house. There
109 was a salt-house or warehouse connected with it, and a place cut off for a counting-room or office, and there was a store-room; I think it was weather-boarded, and I think it was painted; but I am not sure of that.

44th by same. At what sum did you value that store-house, with all the rooms attached, in making up the said sum of $3,000?

Answer. At about $500.

45th by same. In making up the said estimate of $3,000, how much did you include for the barn or stable, as it has been called, if anything?

Answer. I am inclined to think that I did not estimate it.

46th by same. Where did you live in 1857?

Answer. At Logan Court-House.

47th by same. How long had you lived there, and when did you remove therefrom?

Answer. I think I moved here in 1848, and left here in 1859.

48th by same. What business were you engaged in while at Logan Court-House?

Answer. Carrying on a tannery, and shoe and saddle business mainly, and mixed up with saw-logs.

49th by same. Now, reflect and see if you settled at Logan Court-House as early as 1848.

Answer. That is my recollection, that I came here in November, 1848.

50th by same. Do you remember one E. T. Tillotson, and when he came to this country?

110 Answer. I remember him very well. I brought him here. I came years before he did.

Re-examined by J. W. KENNEDY, Esq.:

1st Question. Where is the lot you purchased from Mr. Lawson situated with reference to lots 8, 9, 10, about which you have been testifying?

Answer. It is situated adjoining No. 8, at the corner of 8; the lot that I bought runs back towards the hill and faces on the public square. I refer to a plat which is filed with my answer; the lot that I bought, No. 7, runs for length north, and lot No. 8 runs for length west.

2d by same. State whether it lies wholly within the bottom.

Answer. Yes; it is in the bottom.

And further this deponent sayeth not.

HENRY P. CLARK.

H. S. WHITE, a witness on behalf of George R. C. Floyd, of lawful age, having been by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows:

1st question by J. W. KENNEDY, Esq. State your age, residence, and occupation.

Answer. My age is 54; I live about 6 miles from here, and am a farmer.

2nd by same. Please state whether or not you are acquainted with the lands purchased by George R. C. Floyd of Anthony
111 Lawson by contract dated 1857; if so, how long and what are your opportunities of being so acquainted?

Answer. Yes, sir; I would say that I was acquainted with them. I think that I came to this place about 1848, and I lived here as my home until about 1854 or 1855. I have been over the land since the war and have become more familiar with it than ever I did before that time.

3d by same. State whether or not you were acquainted with that portion of said property designated as lots Nos. 8, 9, 10, 11, and 12 at the date of said contract of 1857 or before said date.

Answer. Yes, sir; I was acquainted with it before and at that time.

4th by same. What was the value of said lots 8, 9, 10, 11, and 12 at the date of said contract?

Answer. If I could be permitted to put the value at which Mr. Lawson put them in to the commissioner of the revenue I could do that. I could give my opinion of it, but I don't pretend to say that I could give the cost of putting up the house; but my opinion is that about $3,000 is a fair estimate for the lots at the time.

5th by same. Do you mean to include in this estimate the value of the buildings?

Answer. Yes; I mean it for the whole value of the property as it then stood.

6th by same. State whether you were thoroughly familiar with said property at that date.

112 Answer. Well, I would say that I was as much so as any man could be who lived in this place. I was frequently on the property and in the houses.

7th by same. State whether you are acquainted with the value of property in the same community at said date.

Answer. There was property selling here at that time or about that time that fronted the public square. Mr. Henry P. Clark bought a lot about that time. I don't know that I could state any further than I have; not a great many lots were sold about that time. Dr. Bryant and me purchased a lot over here that fronts the square that I now own. We paid, or was to pay, $500 for it; it fronted on the northeast corner of the public square and was next to the hill. We resold the property; I don't know that I could tell the price exactly, but I think it was for $600.

Cross-examined by JAS. H. FERGUSON, Esq.:

1st Question. Do you know in what year Henry P. Clark made his purchase?

Answer. I don't know that I do, but it was somewhere from 1848 to 1850, but I would not be positive as to the year.

2d by same. Then it was not about or near 1857, as you stated in your direct examination?

Answer. If I stated that it was a mistake.

3d by same. In what year did you and Dr. Bryant make your purchase and who from?

113 Answer. It was either in 1849 or 1850 or 1851 we purchased from William Stratton.

4th by same. Were the lots purchased by Clark and yourself and Bryant the only lots you know of having been sold at Logan Court-House between 1848 and the date of Floyd's purchase from Lawson in 1857?

Answer. They was not; there was more lots sold if I am not mistaken. I think Mr. E. T. Tillottson bought a lot of Col. Lawson in the southeastern corner of the public square and fronting it. I think that Tillottson laid off his purchase into small lots, and sold some of them. I think that Judge Ward purchased his lot on the corner after 1848. The old Smith tavern was traded some time within that period, and owned by 2 or 3 different men. I don't remember now any others.

5th by same. Can you tell about what year Tillottson made his purchase of Lawson?

Ans. I don't know that I can tell precisely the year; the impression upon my mind is that it must have been from the year 1849 to 1851.

6th by same: Do you remember into how many lots Tillottson laid off the lot that he bought?

Ans. I do not.

7th by same. Was not the purchase and sale of the lots by Tillottson the commencement of a large increase of the value of lots at Logan Court-House?

114 Ans. That is the way that I always looked at it. Property then commenced to increase in value.

8th by same. State what constituted the public square at Logan Court-House originally.

Ans. My understanding of it is that the public square commenced from the lot — John Buskirk and the lot that I now own and ran from there to the river; it was then what is now the public square and the lots between the street and the river.

9th by same. Do you remember the number of lots that it was laid off into?

Answer. I think four (4).

10th by same. Give your recollection of the purchasers of each lot and the price paid for each.

Ans. I don't know that I could correctly state what the lots brought. I think James Lawson bought the one that the old court-house

stood upon and George Clarke bought the one that the stone clerk's office stood on. I bought the upper corner lot and I think I paid $250 for it, though I would not be positive.

11th by same. State to whom you sold the lot that you bought and for how much.

Ans. I sold it to Major Reese Browning, but I do not remember for how much.

12th by same. In what year were these sales?

Ans. I think about 1852.

13th by same. In the year 1857 and prior thereto were not the lots 8, 9, 10, 11, and 12 considered among the choice lots at Logan Court-House?

Ans. Yes, sir; I think it was decidedly the best property.

115 14th by same. About what was the size of the lots sold out of the public square that you have spoken of as compared with lots 8, 9, 10, 11, and 12?

Ans. I would think that the lots 8, 9, 10, 11, and 12 are larger than the lots sold out of the public square if they run down as far as I think they do.

15th by same. About how much land in the aggregate, in your opinion, was sold off of the public square at the sale that you have mentioned?

Ans. To guess at it, I would think that there was between one acre and a quarter and one acre and a half.

16th by same. In your estimation of the value of lots 8, 9, 10, 11, and 12 and the buildings thereon, how much do you estimate for the land without the buildings and how much for the buildings?

Answer. I would estimate the 5 lots at probably $1,200.

17th by same. Do you pretend to say that $1,200 would have been the market price of those lots at that period, or that they could have been bought at any such price?

Ans. I don't know what Mr. Lawson would have taken for them or what price he would have taken for them if there had not been any buildings on them; but that is my opinion of their value. Mr. Lawson sold Mr. Tillotson the corner acre lot, I think, for $300 about *about* the year 1852; that is the basis upon which I formed my estimate of the value of the lots 8, 9, 10, 11, and 12, but I don't know that it is the sole basis.

116 18th by same. Have you not already said that there was a large increase in the price of lots at Logan Court-House after that sale to Tillotson and before 1857?

Ans. That is the way that I always looked at it. The price of lots began then to go up. After he bought of Mr. Lawson was the beginning of the increase.

19th by same. Did not Tillottson divide the lot he bought of Lawson into 3 or 4 lots and sell them at from $200 to $300 each, or more, after he bought and long before 1857?

Ans. I could not say what Mr. Tillotson got for the lots after he laid them off into 3 or 4, but that he sold them at a very good profit; my impression is that he sold off enough to pay off $300 or $400 and then had a lot left, though I may be mistaken.

20th by same. In fixing the value of lots 8, 9, 10, 11, and 12 and the buildings thereon, how much do you include for the whole of the buildings on all of the lots?

Answer. It would be about $1,800.

21st by same. State whether or not the buildings were all burnt off the lots during the war.

Answer. Yes, sir; they were all burnt off.

(Question and answer excepted to by counsel for Geo. R. C. Floyd.)

22d by same. State anything you know of your own knowledge or from conversations with the plaintiff Floyd as to a sale by him, Floyd, of any of the said lots after the buildings were burnt off; to whom sold, and at what price.

117 (Question excepted to by counsel for Geo. R. C. Floyd.)

Answer. Yes; Col. Floyd sold the lots 11 and 12 to Urias Buskirk for $700, according to my recollection.

23d by same. Describe the dwelling-house of Mr. Lawson on lot 11; its size, including length and width; its shape, how constructed; the number of rooms in it, the number of chimneys, the material of which the chimneys were built, the number of fire-places, and its height.

Answer. I could not describe neither the length nor width, for I don't know; never measured it; I don't know as I could tell its shape; it was a framed house, I think; I could not tell the number of rooms in it; I have frequently been in the house, but don't remember exactly how many rooms it did have; I don't know the number of chimneys, but there was some 2 or 3, I am not certain which; I could not tell now whether the chimneys were brick or hewed stone; I think that the chimney of the kitchen was stone, but I may be mistaken in that; I don't remember the number of fire-places; I would suppose, though, that there were from 3 to 5; from the recollection that I have of it now, I don't know how high it was; it was a two-story house, but I don't know how high the stories were, for I never measured them.

24th by same. Was not the house two and a half stories high?

Answer. I don't know; I always regarded it as a two-story house.

25th by same. In your estimation of all the buildings on
118 all the said lots, how much did you estimate for the value of the dwelling-house?

Answer. I estimate the dwelling-house at about $1,000 and the store-house at about $800.

26th by same. Now, inasmuch as you have sworn that you don't know the length of the dwelling-house or its width or its shape or the number of rooms in it or the number of fire-places in it or the number of chimneys to it or the height of it, please to tell us how you have arrived at your conclusion as to its value.

Answer. Well, just in this way: The property was a property that had been used by John Lawson in his lifetime and by Mr. Anthony Lawson while he lived here; I don't know of any other persons living *in* the property until it was sold to the Colonel; for a number of

years the property would naturally decay and become old and not worth as much as new property that was built out of fresh material and built in the same way, and that is the reason why I considered the property worth in the aggregate what I put it at, because, if the property had been fresh built out of new material, I should have placed them at a higher estimate.

27th by same. Do you know, or have you any idea, of what it cost to build that house?

Answer. I could not say, because I don't know what it cost; some way or other — the impression, either by Mr. Lawson or some other person—I think Mr. Anthony Lawson, though I may be mistaken in that—that it cost Mr. John Lawson, who built the house, about $1,500; I don't state this as a fact, but as an impression.

119 28th by same. Now, give the size, character, and number of rooms in and connected with the store-house that you say you valued at $800.

Answer. I think the store-house was about a story and a half high. I don't know its length or width. It fronted the public square, and had a front porch to it and a counting-room, as it was always so called, that run back from the store-room, and I don't know what its size was, because I never measured it, and it joined an old house that connecteh with the counting-room and was called the old store-house, and it may have had—it seems to me it did have—something like a carriage-house attached to it.

29th by same. Then, if I understand you correctly, your estimation of the value of lots 8, 9, 10, 11, and 12 and the buildings thereon at $3,000 is made up of the lots without the buildings at $1,200, the dwelling-house at $1,000, and the store-house at $800; am I correct in this?

Answer. Yes; I think so.

30th by same. Now, please to state what other buildings there were upon those lots or any of them.

Answer. There was no building that I remember of except that Mr. Lawson built a house for his colored people under the bank. The stable was not on these lots. That is my recollection,

120 though I may be mistaken. I think that the stable stood on the upper end of the lot that Nighbut bought.

31st by same. Don't you remember that the street or road running down — the river instead of going straight as it now does turned to the left and ran down to the river bank about or just below where the stable now is?

Answer. Yes; the road turned to the left and ran down to the river bank just below where the stable now is, but I don't remember that there was any stable there, though there may have been, but if there was it has gone clear out of my mind.

32d by same. Then, in your estimate of $3,000, you did not include anything for the stable; is that correct?

Answer. No; I did not include anything for the stable.

33d by same. Now give the size, character, and number of the rooms and value of the house which you say Mr. Lawson built for his negroes between his dwelling-house and the river.

Answer. I think it had two rooms to it. I don't know the size. I think it was only one story high, though it might have been higher. I could not say the value of it.

34th by same. Then do you wish to be understood as saying that you did not include anything for the value of this house in your estimation of $3,000 for the value of the whole property?

121 Answer. I did not include anything for the value of the house under the bank in my estimate of $3,000; that was only my estimate of the value of the property in running over it in my mind.

35th by same. Did you include anything in that estimate for the value of a carriage-house or blacksmith shop on lot No. 10?

Answer. I don't know that I thought of the carriage-house or blacksmith shop in making that estimate; I did not include anything for the value of the carriage-house or blacksmith shop. I don't know whether the blacksmith shop was on any of the lots.

36th by same. When was your attention first called as to the value of lots 8, 9, 10, 11, and 12, including the buildings thereon, and by whom and for what purpose, and when did you first arrive at your conclusion that the value of the whole was $3,000?

Answer. Col. Floyd told me some time during this term of court that he wanted to take my deposition with regard to this property, and I have been thinking over the thing ever since he told me that he wanted to take my deposition. I put the thing into the scales and weighed it the best way that I could and gave my opinion, and that is all that there is in it.

37th by same. What, if anything, did Col. Floyd say to you as to his opinion of the value of the property.

(Excepted to.)

122 Answer. There was a conversation took place between Col. Floyd and myself as to what he put the property at and what Col. Lawson put it at. I think that Col. Floyd told me that Col. Lawson put the property at $500 less than he did. I think that was the conversation if I am not mistaken.

38th by same. What did Col. Floyd tell you that he put it at.

Answer. I think that he said that he put it at $3,300, and Mr. Lawson at $2,800; I am not positive; I may be mistaken, but it seems to me that that is what he said.

39th by same. In this conversation was Col. Floyd speaking of the testimony of Lawson and himself in this case with regard to this property?

Answer. That is the way I understood it.

40th by same. Then, as you understood Mr. Floyd, from his statements, to have placed the value of the whole property at $3,300, and Mr. Lawson to have placed it at $2,800, you came to the conclusion, did you not, that it would be fair to split the difference between them and fix it at $3,000.

Answer. I never thought anything at all about splitting the difference. After I was called upon by the Col. here — that he wanted to take my deposition, I valued the property in my own mind, regardless

of anything that I had heard talked of about it. In the last 2 or 3 days, since court commenced and since it was understood
123 that I was going to give my deposition, I valued the property and placed the estimate of all the property that I then thought of that was upon it, and put the estimate at $3,000. The conversation that I had with the Col. or with any one else did not have anything to do with it at all.

41st by same. Now, please tell what other conversations you had with Col. Floyd about the value of the property since you were spoken to by him.

Answer. We did not have any that I remember of.

42d by same. Have you not been in consultation with Col. Floyd at various times in the street here, and at White's Hotel in this town, during the last two days, about this case and your evidence in it?

Answer. I have not; I never intimated to Col. Floyd what my evidence would be at all.

43d by same. Do you mean to be understood as saying that you have not been in consultation or have conversations with Col. Floyd at various times in this town, on these streets and at White's Hotel, in the last 2 days?

Answer. I have; every time the Col. and me meets we have something to talk about, but, so far as it pertains to the value of this property or what I would put it at, he never intimated to me or I to him what it would be.

44th by same. Please tell us what you did talk about.

Answer. The Col. and I was talking about the property
124 that I bought of him before, for one thing, and then about the lots that he sold to other parties and a lot of cattle that I had on hand, about paying him when the time came if necessary, what the property failed to bring, and perhaps many other things not recollected now.

45th by same. Did you have any conference or conversation with Henry P. Clark about the value of the property during this court?

Answer. I don't remember any; I might have had, but I don't remember it.

46th by same. State what knowledge and experience you had in the building of framed houses and the cost thereof prior to 1857.

Answer. I was a boy when I came here to this place, under 21 years of age, and had very little knowledge or experience of the cost of building a house of that character.

47th by same. State how much less, in your opinion, was the dwelling-house of Mr. Lawson, that you have testified in regard to, worth in 1857 than when originally built?

Answer. I could not say, because the natural decay of the property and the rotting of the sills, &c., is a thing that I cannot answer; I know that I put a higher estimate on property that was new than on that that had been built for a long time.

48th by same. Did not Mr. Lawson, as a rule, keep his
125 dwelling-house in good condition and repair?

Answer. I think he did, sir.

49th by same. Do you know as a fact that that house was worth any less in 1857 than when it was originally built?

Answer. No, sir; I do not.

50th by same. Now, look at Deed Book "C," on pages 304–305, at the record of the deed bearing date the 9th day of October, 1852, from Anthony Lawson and wife to Edward T. Tillottson, for parts of lots Nos. 1 and 2, in the town of Lawsonville, now Aracoma, and say whether or not the property conveyed by said deed is the same you have spoken of in your cross-examination as sold by Lawson to Tillottson for $300.

Answer. Yes, sir; that is a part of the property that I talked about. I thought that it included the whole lot, but I find that the deed does not include the whole lot; but I still have an impression on my mind that Tillottson bought the whole lot for $300.

Note by Com'r P. Fontaine: (The defendant, Anthony Lawson, will file a copy of this deed with this deposition as an exhibit, marked "L. & T.")

51st by same. Now, look at the same book, page 299, at the record of a deed from E. T. Tillottsen to William Straton, for parts
126 of lots numbers 1 and 2 aforesaid, for the consideration of $100, and say if that is a part of the same property conveyed by Lawson and wife to Tillottson, mentioned in the last question and answer.

Answer. I think it is, sir.

Note by Com'r P. Fontain: (A copy of this deed will be filed by the defendant, Anthony Lawson, as a part of this deposition, marked "T. & S.")

52d by same. Now, look at the same book, page 305, at the record of deed dated November 8, 1852, from E. T. Tillottson to Allen T. Butcher, for parts of lots Nos. 1 and 2 aforesaid, for the consideration of $200, and say whether that is a part of the same property conveyed by Lawson and wife to Tillottson as aforesaid.

Answer. I think it is, sir.

53d by same. Now, look at the same book, on pages 315–316, at the record of a deed from E. T. Tollottson to Levi Vance, for part of lot No. 1, for the consideration of $133, and say if it is part of same property conveyed by Lawson and wife to Tollottson as aforesaid.

Answer. It is a part of the same.

Note by Com'r P. Fontain: (Copies of the two deeds last spoken of will be filed by the defendant, Anthony Lawson, as parts of this deposition.)

54th by same. Now, look at the same book, page 316, at the
127 record of a deed from E. T. Tillottson to William Straton, for parts of lots Nos. 1 and 2 aforesaid, for the consideration of $220, and say whether this is also a part of the same property conveyed by Lawson and wife to Tillottson as aforesaid.

Answer. I think it is.

Note by Com'r P. Fontain: (A copy of this deed will also be filed by the defendant, Anthony Lawson, as part of this deposition, marked "T. & S." No. 2.)

Memo. by Com'r P. Fontain: (The complainant, by counsel, excepts and objects to the filing of each and all of the aforesaid copies.)

55th by same. Now, look at the same book, page 584, at the record of the report of Thomas Dunn English to the county court of Logan county, to the November term, 1855, of said court, and of the order of said court thereon, and say if the lots therein named are the same lots sold by the county court, being part of the former public square in the town of Lawnsville, as stated in your testimony given to-day.

Answer. Yes.

Note by Com'r P. Fontain: (A copy of said report and order will be filed by the defendant, Anthony Lawson, marked "T. D. E.")

Memo. by Com'r P. Fontain: (The complainant, by counsel, excepts and objects to the filing of the last aforesaid copies.)

Re-examined by J. W. KENNEDY, Esq.:

128 1st Question. State whether or not at any time or on any occasion in any conversation Col. Floyd attempted to influence you in reference to the testimony to be given by you in this case, and whether you were so influenced or *in any* otherwise.

(Objected to by the defendant, Anthony Lawson.)

Answer. He never did; if he ever attempted to influence me in any way I don't know it. I was not so influenced or otherwise.

2nd by same. State whether or not, at the time of the several conveyances referred to in the deed-book the rise in property heretofore spoken of existed.

Answer. From the time Mr. Tollottson commenced to sell those lots there was a rise in the property here, as I understood.

3d by same. State whether or not the lot purchased by Henry P. Clark was regarded as among the choice lots.

Ans. Yes, sir; from the fact that it fronted the square; it was a front lot.

Recross-examined by JAS. H. FERGUSON, Esq.:

1st Question. Do you know the date of Clark's purchase and how much of lot 7 Mr. Lawson sold to him?

Ans. I don't remember the date precisely, but my opinion is that it was either in 1848, 1849, or 1850. I think rather it was in 1849, though I may be mistaken in that, or in its being either one of those years.

129 2d by same. You know, do you not, that it was before October, 1852?

Answer. I think it was. I cannot state positively, but my impression is that it was. As to how much of lot No. 7 was sold to Clark I don't know and never did know.

3d by same. ——.

And further this defendant sayeth not.

H. S. WHITE.

Memo. by Com'r P. Fontain: (The defendant, Anthony Lawson, here called upon the complainant to produce and take the evidence of all of his witnesses, except such as might be required in rebuttal of the testimony produced by said defendant, and gave notice to him, said complainant, that he would object and except to the taking of the testimony of any witness on behalf of said complainant, except in rebuttal as aforesaid.

Memo. by Com'r P. Fontain: (And the complainant, by counsel, asks that a record be here made of the fact that he states that he is through with his testimony for the present.)

Memo. by Com'r P. Fontain: (The complainant, by counsel, then stated that he wished to reserve the right to examine L. D. Chambers in chief; and the defendant, Anthony Lawson, by counsel, then stated that he would not object or except to the examination of said Chambers as desired by the complainant, provided that said witness be produced by 12 m. of to-morrow, April 7, 1882.)

WILLIAM A. DINGESS, a witness on behalf of the defendant, Anthony Lawson, of lawful age, having been by me first duly sworn to speak the truth, the whole truth, and nothing but the
130 truth, answered and deposed as follows:

1st question by JAMES H. FERGUSON, Esq. State your age, residence, and occupation.

Ans. I am going on 76 years old; live in Logan county, and am a farmer in part and have been a surveyor for a time.

2nd by same. Are you the surveyor who made the survey and plat for Col. Floyd, the plaintiff in this case, a copy of which is filed with his bill as Exhibit "C?"

Ans. Yes, sir.

3rd by same. Now, look at the book of surveys of Logan county, on page 400, and say whether or not the land contained in the plat and certificate of survey recorded thereon of 700 acres, dated the 5th day of March, 1855, or any part of it was included in *in* the survey you made for Mr. Floyd, the plaintiff, and, if only part thereof was included, was it the half or less than the half thereof.

(Excepted to by complainant.)

Answer. There was a part of it included, but I could not say whether it was half or more than half or less than half, but from the plat that is in the book here I would say that there was less than half.

4th by same. Have you compared the plat of the survey made by you with the said plat of 700 acres recorded in the book and on the page referred to; and, if so, have you—taking the two plats as a basis—have you calculated as nearly as you can, without a survey of the 700-acre tract, the proportion of said 700 acres included in your said survey?

(Excepted to by complainant.)

131 Answer. I have compared them, and from the appearance of them the plat that I made for Col. Floyd don't cover half of the land.

5th by same. At whose instance did you make that survey, and did the defendant Lawson, or any one representing him, have anything to do with it?

(Excepted to by complainant.)

Answer. I made it at Col. Floyd's instance. The defendant Lawson, or any one representing him, did not have anything to do with it that I recollect.

6th by same. Can you tell without an actual survey of the whole 700 acres and an equal partition thereof between the defendant, Anthony Lawson, or Col. Floyd holding under him, and Astyanax McDonald, holding under a purchase from James Lawson, the former owner of a moiety thereof, what number of acres is contained within the boundary sold by Lawson to Floyd by the contract of 1857?

(Excepted to by complainant.)

Answer. No.

Memo. by Com'r P. Fontain: The defendant Lawson here asks a memorandum to be made of the fact that he offers to the plaintiff, in order to expedite this suit, to let Mr. Dingess, the surveyor selected by Floyd to make the former survey, go on and complete the survey by running the lines of the 700 acres above mentioned and making a partition thereof between the plaintiff Floyd and Mr. McDonald above named and assigning to each an equal portion thereof; and the said Astyanax McDonald, being present,
132 agress that that may be done, and the plaintiff declines to accede to this proposition.)

And further this defendant sayeth not.

WM. A. DINGESS.

JOHN DEGARETTE, a witness, &c.:

1st question by JAMES H. FERGUSON, Esq. State your age, residence, and occupation.

Answer. I am 64 years old; live at Logan Court-House, West Virginia, and am a carpenter.

2d by same. How long have you lived at Logan Court-House?

Ans. I have lived here since 1853.

3d by same. In 1851 and prior thereto were you acquainted with the dwelling-house and other buildings of the defendant Lawson on lots Nos. 11 and 12 at Logan Court-House, and also on lot No. 10 at same place.

Answer. Yes, I was.

4th by same. Describe, as near as you can, the size and character of Mr. Lawson's dwelling-house, the manner of its construction and shape, the number of rooms and chimneys therein in 1857, the opportunities you had of knowing its character and construction, and its value.

Answer. The house was what I called an "L" building, the length of it, fronting the old square and running towards the river; could not be less than 50 feet the other side; the first sitting-room was in the main building in the corner next to the store, and also fronted the square; I hardly know the length of the dining-room, but it may have been 20 or 25 feet; adjoining that was a one-story
133 building, which was used as a kitchen awhile, and was 15, 16, or 18 feet, I guess; and then there was a shed between that and the kitchen; the kitchen was pretty near a square building, 15 or 18 feet square. The whole "L" was about 55 feet long, I think, not including the kitchen.

The hall must have been, I think, 12 feet wide and ran up and down the river into a back porch. The porch ran with the main building down the river to the shed between the kitchen and main building. The large parlor was to the left of the hall as you go in from the front, and, I think, was 20 or more feet long and about 18 feet wide.

The portico, I think, was about 8 by 12 feet and corresponded with the hall.

I covered it with zinc and made a latticed banister to it. The portico had a stone floor and the stones were nicely gotten out and laid level and smooth and well jointed up. The house was a full two-story building; some might call it a story and a half, but I call it full two stories high. It was all that high except the small room down the river that I have said was one story high. There were seven rooms upstairs; there was three chimneys; the one next to the river was brick, I think, and the other two were stone, and one of them double, I think. The double chimney was at the lower end of the dining-room, adjoining the one-story building. There were 5 fire-places that I remember. I don't remember whether or not there was one upstairs in the chimney next to the river. The house was a frame building, ceiled and weather-boarded, and as well
134 finished as mechanics could do it in those days. I lived with Mr. Lawson in the same house for about 2 years, in 1840 and 1841, I think, and while I lived there I roofed the house and pitched it with coal-tar and sanded it, &c., and also repaired the portico—put in new pillars and covered it with zinc—and did some painting inside the building. I was frequently repairing and fixing about the house—doing little jobs—but I cannot now remember them, except that I remember repairing the back porch. The house was partly painted inside—not all over—I think, when I left, and was painted outside. I think I went away whilst Mr. Lawson had a painter there.

5th by same. Now, from your knowledge and experience as a carpenter, what would it have cost to build just such a dwelling-house as you have described at Logan Court-House in 1857?

Answer. Well, I don't think a man could have built that building and delivered up the keys; it would certainly have cost $1,500.

6th by same. How were the facilities for building in 1857 compared with the same facilities for from 15 to 20 years before?

Answer. There could be hardly any comparison, for from 15 to

20 — before there was hardly any facilities; lumber had to be gotten out by hand, whip-sawing, &c.; the lumber in that building was partly got out by whip-sawing and the repairing that was afterwards done on it seems to have been with lumber got from a saw-mill.

135 7th by same. Now, look at your former deposition in this case as to the value of all the buildings on lots Nos. 11 and 12, as well as the buildings on lot No. 10 and the lands below, and see if you have any change to make in your figures; if so, state it.

(Excepted to by complainant.)

Answer. No, sir; I don't know that it is necessary to make any change.

Cross-examined by J. W. KENNEDY, Esq.:

1st Question. Please state the value of the buildings other than the dwelling-house on lots 11 and 12 at the date of said contract of 1857.

Answer. I never noticed particularly the finish of the kitchen next to the river that Mr. Lawson built, and was never in it much, and don't know the manner in which it was finished, but I think that it was not altogether finished below. That building, as well as I can remember and recollect, would, I suppose, be worth about $300. There was a kitchen at the end of the "L" which was worth $150 to put it up. I can't recollect much about the smoke-house, but it was a single story and good size; can't recollect whether it was frame or log. These were all the buildings on 11 and 12.

2nd by same. In your estimate contained in your former deposition referred to of the value of the buildings on lots 11 and 12, how much did you include for the value of the smoke-house, lower kitchen, the upper kitchen, and the dwelling-house, respectively?

136 Answer. In my former deposition I did not designate the lots. I did not then recollect about the smoke-house. I might have said what it was worth—guessed at it.

3d by same. Would you have me to understand you to say that in making up your estimate in your former deposition, under oath, of the buildings on said lots Nos. 11 and 12, you did not take into consideration the said smoke-house or guess at its value?

Answer. I must have guessed at the value, because I was at the time 3 or 4 days trying to get at the value of all the buildings.

4th by same. How much do you include for the value of said smoke-house?

Answer. Well, sir, I can't include anything, because I cannot now call to mind its character; I cannot call to mind the finish and cannot estimate it unless I knew exactly what it was.

5th by same. How much did you include for the value of the lower kitchen next to the river in making up your said estimate of the value of the building on said lots?

Ans. I did not mark the buildings; I put all the buildings together; I did calculate them separately, too, and then put them to-

gether; I always calculated it at about $300. I think I understood that I had to make an estimate of all the buildings on the different properties.

6th by same. How much did you include for the value of the
137 dwelling-house in said estimate?

Ans. About $1,500.

7th by same. How much did you include for the value of the upper kitchen at the end of the shed?

Ans. About $150.

8th by same. Are those the values of all the buildings in your former estimate of the buildings on the lots Nos. 11 and 12?

Answer. Yes, sir.

9th by same. Now, tell me how you arrived at the sum of $3,100 from the sums of $300, your estimate of the lower kitchen; $1,500, your estimate of the dwelling-house, and $150, your estimate of upper kitchen.

Answer. I arrived at that by including the other buildings—the store over here partly.

10th by same. Did you not state in your former deposition that the value of buildings on lots No. 11 & 12 was 3,100?

Answer. No, sir; I don't see how I could state that in my former deposition. I don't recollect it, because I never did know anything about the number- of the lots; consequently I put them together, and not knowing about the number- of the lots I put them all together, and don't recollect that I understood before anything about the numbers of the lots. I never understood anything about the number- of the lots.

11th by same. Did you not in your examination-in-chief look at your former deposition and state that you did not wish to make any change as to your estimate there made?

138 Answer. Yes, sir; I did not understand then that that examination regarded these numbers; I did not consider the numbers.

12 by same. Please to state the value of what buildings you did include in the sum of $3,100 in your former depositions.

Answer. I included the store on this corner lot, and I went to the lower end of the lot then and took in that barn and blacksmith shop in making that calculation. I arrived at that calculation in that way, but I can't think what I valued them at. I think I took in also the old dwelling where Mr. Miller lives.

13 by same. Is the house where Mr. Miller lives situated on said lots Nos. 11 and 12?

Answer. No, sir.

14th by same. Did you not state in your former deposition that the value of the buildings on lots Nos. 11 and 12 was $3,100?

Answer. Well, sir, I did not estimate it in a way that I could place it on them lots alone.

15th by same. State where the store-house was spoken of by you as included in your said estimate of $3,100.

Answer. It was right on the corner of the square, fronting Mr. Lawson's dwelling and the square. It was not on lots 11 and 12

and on the opposite side of the street from Mr. Lawson's dwelling-house.

16th by same. State the value of what building or buildings was included in the sum of $1,000 given by you as the value of buildings on lot No. 10. in your former deposition.

Ans. I think it was the store and the other buildings ad-
139 joining it. I don't recollect now what I valued it at at that time.

17th by same. Did you not just state that you included the store-house in the said sum of $3,100?

(Objected to as *respecting* the same question over and over.)

Answer. Yes, sir.

18th by same. State the value of said store-house at the said date of 1857.

(Objected to as a continued repetition of the same question, and because the question is not definite from the explanations of the counsel.)

Ans. The store-house was in front of the other buildings. It was worth alone about $350.

19th by same. State the value of the other buildings on lot No. 10 at said date.

Answer. I think the balance of the building- were worth as much as the store.

20th by same. ——.

Re-examined by JAMES H. FERGUSON, Esq.:

1st Question. State whether or not at the time of giving your former deposition in this case you had any knowledge of the location of lots Nos. 10, 11, and 12, sold by Lawson to Floyd, by their numbers.

Answer. I had not.

2d by same. Do you now understand the location of said lots by their numbers, as has been explained to you?

Answer. I think I do.

3rd by same. With that knowledge, now state what buildings you included in making up your valuation of $3,100 in your former deposition, whether you included only the buildings on lots 11 and 12, or whether you included all the buildings on lots 10, 11, and 12.

Answer. At that time I included, I think, the buildings on
140 11 and 12 in that calculation. I understood the whole of it as a lot, and the stable. I expect I included the buildings on 10 also.

4th by same. Reflect upon it, and see whether you don't know whether you did or not.

Answer. I can hardly satisfy myself, but I must have done it.

5th by same. Now see if you can figure up $3,100 without including the buildings on number 10.

Answer. Of course I cannot.

6th by same. State, as nearly as you can, the location of the blacksmith shop that you spoke of.

Answer. It was on the lower end of the lot that the store-house was on, which was called, as I now understand, number 10.

7th by same. Now describe the location of the stable you speak of, across the street from the blacksmith shop.

Answer. As I now understand it, it was at the lower end of lots numbers 11 and 12 and opposite the blacksmith shop, and stood near about the same place where the stable now stands.

8th by same. State whether or not you have any recollection of a well and well-house on either of said lots; and, if so, give the location and character.

Answer. Yes, sir; there was a well and well-house. It was closed up, with a frame building around it. It was a good well, walled with stone, and with a windlass and bucket. It was on lot No. 11, nearly adjoining the kitchen at the lower end of the house.

10th by same. State further, as you now remember, whether or not you included the $400, value of what you have called the Miller house, below lots number- 10, 11, and 12, in your estimation of $3,100.

141 Answer. I don't think I did.

9th by same. Now, state, if you remember, whether or not you included the well, well-house, smoke-house, and stable and blacksmith shop across the street in your valuation of the buildings on said lots.

Answer. I think I did.

11th by same. Taking your former deposition as it is written down, in which you are made to say that the value of the buildings on lots numbers 11 and 12 was $3,100, and of the buildings on lot number 10 was $1,000, making in all $4,100, value of buildings on lots 10, 11, and 12, now, state whether this is what you said or intended to say at that time.

Answer. I intended to say they were worth $3,100.

Recross-examined by J. W. KENNEDY, Esq.:

1st. Question. Can you now say that you know whether or not you included in your estimate in your former depositions as to the value of the buildings on lots 10, 11, and 12, the house where Mr. Miller lives, spoken of in your former cross-examination in this deposition?

Answer. I cannot recollect whether I separated that from that calculation or not.

2d by same. State what was the value of the house where Mr. Miller lives at the date of the contract of 1857.

Answer. I think my estimate of the house was about $1,400. I repaired and did a good deal of work on it.

Note by Com'r P. Fontain: (The further taking of the deposition of the witness, John Degarnette, is adjourned until to-morrow, April 8, 1882.)

142 1st question by JAMES H. FERGUSON, Esq. After the best reflection and examination you have been able to give to the

subject since yesterday, now, state what you intended — include in your former deposition in the sum of $3,100 as to what you now understand to be lots numbers 11 and 12, and if you have made any figures showing what you intended to include state them.

Answer. After reflecting a good deal yesterday, I am pretty well satisfied that this is my former calculation: I put the house at $1,500, the negro house at $400, the kitchen at $150, and the smoke-house that I could not call to mind at all yesterday occurs to me very plain this morning, and I put that down at $100, the well-house at $50, the stable at $200; I calculated the lots when I made that calculation at $700.

2d by same. Now, to your former deposition in regard to what you now understand to be lot No. 10, state whether you include the buildings alone or the buildings and lot.

Answer. I included the lot with the buildings.

Recross-examined by J. W. KENNEDY, Esq.:

1st Question. When and by what assistance were you enabled to arrive at the conclusion as to the intention of your former deposition with reference to the lots 10, 11, and 12 just given by you?

143 Answer. I had no assistance; I went directly into the clerk's office here yesterday and made the calculation when Judge Ferguson asked me to figure it up.

2d by same. Can you now say that you are positively certain as to the result of your reflection and figuring in reference to the intention of your former deposition as above stated?

Answer. I can't say that I am positively certain, but I am satisfied in my own reflection that I am correct.

And further this defendant sayeth not.

JOHN DEGARNETT.

ANTHONY LAWSON, a witness in his own behalf, of lawful age, having been by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows:

1st question by JAMES H. FERGUSON, Esq. State your age, residence, and occupation.

Answer. I am 69 years old; live at Wytheville, Wythe county, Virginia, and am a farmer and cattle grazer; I am a defendant in this suit.

2d by same. Were you present at the taking of the deposition of the witness, Henry P. Clark?

Answer. I was present most of the time; don't remember whether I was present all the time.

3d by same. Give the date, if you can, of the sale to him by you of the lot mentioned in his deposition.

144 Answer. It was January 1st, 1852, that his note for the purchase-money is dated. He contracted for the lot, but never paid me for it.

4th by same. To whom did you convey the lot, and when?

(Excepted to by complainant.)

Answer. I conveyed it to Urias Buskirk by deed dated Dec. 23, 1856, and recorded in Deed Book "C," pages 495 and 496; I will file a copy of said deed with this my deposition.

(The complainant excepted to the filing of said copy.)

5th by same. At whose instance did you convey it to Buskirk, and did you convey the same piece of ground that you sold to Clark?

(Excepted to by complainant.)

Answer. Clark sold to Buskirk, and Buskirk came to me for the deed. I conveyed to Buskirk precisely the same piece of ground that I sold to Clark.

6th by same. Did you sell and convey the whole of lot No. 7 or only a part of it?

Answer. I have stated in the deed all about it; I have no recollection about it.

(Excepted to by complainant.)

7th by same. How much did Clark agree to pay for the lot?

Answer. $450.

(Excepted to by complainant.)

8th by same. Describe the buildings on it at the time of the sale.

Answer. I don't know that I can; there was a house on it, but I have forgotten what kind of a building it was.

145 (Question and answer excepted to by complainant.)

9th by same. Can you tell whether it was a fine building or old and dilapidated?

Answer. It was a small building and not a good one is all that I can recollect about it.

(Question and answer excepted to by complainant.)

10th by same. What was the number of that lot and the size of the whole of it.

Answer. It was number 7, and the whole of it contained one-half of an acre, like all the other lots.

(Question and answer excepted to by complainant.)

11th by same. State the quantity contained in each of lots Nos. 1 and 2 above the old public square, and in lots 8, 9, 10, 11, and 12 below said square.

(Excepted to by complainant.)

Answer. They were all half-acre lots originally.

12th by same. Were you present at the sale of the lots into which that part of the public square lying between the street running up and down through the town of Lawnsville or Aracoma and the Guyandotte river was divided?

Answer. I was very unwell on that day, and was present only when the 2 lots were sold that I purchased.

13th by same. State the number of lots purchased by you and the location and the price paid for each as far as you can remember.

(Excepted to by complainant.)

Answer. On the commissioner's books they are numbered 4 and 5. They lie at the west end of the lots sold, and I paid for one of them something over $300; that was the lot nearest the street.

146 I do not remember the amount over $300 that I paid for it; that was lot No. 4. Lot No. 5 adjoined number 4, and was back of the court-house lot; ran up and down the river and did not come to the street, and adjoined the lot above purchased by Reese Browning. I don't remember what I paid for 5, but think it was something over $100.

14th by same. State, as nearly as you can, about the quantity of land contained within the six lots into which said portion of the public square was divided, excluding the cross-streets above and below.

(Excepted to by complainant.)

Answer. I think about three-quarters (¾) of one acre.

15 by same. Did you hear the deposition of John Degarnette given in regard to the size, form, construction, number of rooms, &c., of your dwelling-house at Logan Court-House? And, if so, state whether or not the statement was in the main correct, and if anything in regard to said house was omitted, state what it was.

Answer. I was present and heard his deposition, and in the main I believe it is correct. I don't remember anything that he omitted, unless it be the grates, and there were six fire-places in the house, and 4 of them had grates.

16 by same. State in what condition and repair your dwelling-house was at the time of your contract with Col. Floyd in 1857.

Answer. My recollection is that the house was in good condition and repair.

17th by same. Now, describe the house built by you spoken

147 of by the witnesses between the dwelling-house and the river, giving, as nearly as you can, its size, character, construction, and height and the number of rooms in it.

Answer. It was a double house about 40 feet long and about 20 feet wide, one part of it hewed logs and the other part framed, with a stone chimney in the middle between the buildings, with a fire-place in each; it was one and a half stories high, weather-boarded outside and ceiled inside; the frame part of the building was divided into 2 rooms by a partition and it has a shingle roof.

18th by same. Describe the other buildings on lots 11 and 12 as nearly as you can, giving their size, character, and construction.

Ans. I had a framed kitchen about 18 feet square, with a stone chimney and a covered and floored hall between the main building and kitchen; this hall and kitchen were at the west end of the main building on the street running up and down the river. I had a well and well-house near the kitchen; the well was walled up with stone in the usual way; I think — was from 40 to 48 feet deep, with a smooth

rock bottom, and was a good well. The well-house was, I think, locust posts set in the ground, with a shingle roof, and about 12 feet square and weather-boarded, and with a common windlass and bucket. The next building was a smoke-house, which was a double two-storied hewed log building from 14 to 16 ft. square, I think; I don't remember the size of it. I mean by double that it had a floor above the lower story. I used the lower part as a milk-house
148 and the upper part as a meat-house; it also had a shingle roof and was not weather-boarded, and the cracks were chinked, but not daubed. I think the logs were notched down closely. The next was the stable, which was framed, I think, about 40 feet long and about 30 feet wide, and had a floor in it above the first floor and a shingle roof, stalls for the horses, &c.; it was weather-boarded.

19th by same. Now, look at your deposition taken in this cause on October 4, 1879, pages 7 and 8, and state whether you have anything further to say as to the value of lots numbers 8, 9, 10, 11, and 12, and the buildings thereon.

Answer. I have nothing further to say.

20th by same. Did you have anything to do with the survey made by Wm. A. Dingess, filed by the plaintiff in this cause, or any notice whatever that said survey would be made?

Excepted to by complainant.

Answer. I had nothing to do with that survey and received no notice of it.

21st by same. State your interest in and title to the survey of 700 acres spoken of by the witness, William A. Dingess, in his deposition and whether or not your interest in that survey was part of the land included in your contract of 1857 with Col. Floyd.

(Excepted to by complainant.)

Answer. I owned one-half of the survey, 350 acres, and got it by a patent from the Commonwealth. My interest in that survey was part of the land included in said contract.

22d by same. Who owned the other half of said survey and what disposition did he make of it in his lifetime?

Answer. My brother, James Lawson, owned the other half
149 of it and sold it in his lifetime to Astyanax McDonald.

(Question and answer excepted to by complainant.)

Cross-examined by J. W. KENNEDY, Esq:

1st Question. In your estimate of the value of the buildings on lots 11 and 12 in your former deposition, how much did you include for the value of the stable?

Answer. I think about $200.

2nd by same. In said estimate how much did you include for the value of each of the other buildings on said lots Nos. 11 and 12?

Answer. That would be utterly impossible —; I could not answer how I made it at that time.

3d by same. How much do you include for the value of each building on said lots 11 and 12?

Answer. Dwelling-house, $1,500; negro or servants' house, $300; kitchen, $150; well-house and well, $50; smoke-house, $100; stable, $200, making in all $2,300 for the buildings.

4th by same. In your former deposition how much did you include for said lots numbers 11 and 12?

Answer. $700, though I am not certain, and might have put the buildings higher and the lots at less than $700; I am inclined to think I did put the buildings higher; I think I put the negro house at $350, and also I think I put the kitchen, with stone chimney and fixtures, at over $150.

5th by same. What do you now put the value of said lots 11 and 12 at, independent of the buildings?

Answer. I would not know how to price them; I would say this, though, that in my opinion they were worth as much in 1857 as they were when Col. Floyd sold them to Buskirk.

6th by same. If you are not able to say what the value of said lots numbers 11 and 12 was at the date of said contract
150 of 1857, how do you arrive at the aggregate value of $3,000 for lots and buildings?

Answer. I don't know how to answer that question further than I have answered it by valuation of the buildings and valuation of the lots; we always valued lots with good buildings on them at more than naked lots, of course; the lots were well fenced and had shrubbery on them and good gardens, peach trees, &c. In the year 1857 I sold a half a lot in the upper side of town to Judge Ward for $300, a naked lot, with nothing on it. That is the only guide that I have to the value of lots at that time—some guide, at least.

7th by same. In your former deposition what did you include for the value of the buildings in your estimate of $1,200 for lot and buildings of No. 10?

Answer. I don't know, sir, how I estimated them; I could not tell now at all; I might have estimated them in various ways; have put the buildings higher and the lots lower, or the buildings lower and the lots higher, and have easily arrived at the estimate of $1,200; at a low valuation we always considered that the best lot in town.

8th by same. What do you now include for the value of the buildings on said lot No. 10?

Answer. The buildings on lot No. 10 all together I value at $900.

9th by same. What do you include for the value of said lot No. 10?

Answer. $300.

10th by same. How is it that you are able to fix the value of the buildings and lot separately as to lot number 10 and not able to fix the value of the buildings and lots separately as to lots numbers 11 and 12?

151 (Objected to by defendant Lawson because it assumes that the witness has made no answer as to lots 11 & 12.)

Answer. I don't understand the question.

11 by same. Can you now answer the question?

Answer. I can't answer the question any further than I have answered it.

Re-examined by JAMES H. FERGUSON, Esq.:

1st Question. Now state what improvements, if any, were on lot number 10 in addition to the buildings thereon, and in what condition was the lot itself as compared with lots 11 and 12 in addition to the building on those lots.

Answer. There were no improvements on lot 10; it was included in a field in cultivation. Lots numbers 11 and 12 were in high state of a cultivation as a garden, with shrubbery, peach trees, &c., and kept in good order, well manured, and improved by a regular gard-ner. No. 10 was not improved; it was cultivated sometimes in corn and sometimes in oats, and did not have any fruit trees or grass plats on it; we had had clover on it some years before.

2nd by same. Take lots Nos. 11 and 12 in the condition you have described, with all the buildings and the other improvements thereon; was $3,000 for lots, buildings, and improvements a high or low estimate of their value, in your opinion.

Answer. I always considered it a very low estimate.

3d by same. Take lot number 10 in the condition it was with all the buildings thereon; was $1,200 a high or low estimate of lot and buildings, in your opinion

Answer. I always considered it a low estimate.

4th by same. What was the size of the lot or part of lot sold by you to Judge Ward for $300, as stated in your cross-examination?

152 Answer. It was intended to be a quarter of an acre.

And further this defendant sayeth not.

A. LAWSON.

JAMES A. NIGHBERT, a witness in behalf of Anthony Lawson, of lawful age, having been by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows:

1st question by JAMES H. FERGUSON, Esq. State your age, residence, and occupation.

Answer. I am 49 years of age; live at Logan Court-House, West Virginia, and my occupation for 12 months has been timbering; I was formally merchandising.

2d by same. Were you acquainted with the buildings on lots Nos. 10, 11, and 12 in the town of Aracoma in the year 1857 and previous thereto, and where did you reside at that time?

Answer. I was acquainted with those buildings at that time and then resided at Logan Court-House; I occupied the store counting-room, salt-house, and old store-house or lumber-room for about 4 years; I reckon they were on lot No. 10.

3d by same. What, in your opinion, was the value of the build-

ings in 1857 *in* said lot No. 10 at the time of the sale thereof by the defendant Lawson to the plaintiff Floyd? Give the same in detail and in the aggregate.

Answer. I put the store-house at $450, the counting-room at $75, the old store or lumber room at $150; that was ceiled inside
153 and shelved, and had a pair of stairs; the salt-house at $50; the carriage-house was worth about $50, and the blacksmith shop $25, making in all $800; I consider that to be the fair value of those buildings.

4th by same. What, in your opinion, was the fair value of the buildings on lots Nos. 11 and 12 at the same time spoken of in the last question? Give the same in detail and in the aggregate.

Answer. I should put the main building, the dwelling-house, at $1,500; the negro house at $350; the kitchen at $100 (which, I think, is too low, there having been an entry between it and the main house which was not taken into account; the entry was covered and floored and had a shingle roof); the smoke-house a- $100; the well-house at $50; the barn at $200; in all $2,300.

5th by same. How much, in your opinion, would the entry you have described add to the value as you have stated it, if anything?

Answer. I think about $100.

Cross-examined by J. W. KENNEDY, Esq.:

1st Question. Did you ever make any examination of the buildings either on lot No. 10 or lots 11 and 12 with a view of fixing a value upon them?

Answer. I did not, sir.

2d by same. Can you say you are sufficiently familiar with any of said buildings to be enabled accurately to fix their value?

Answer. I think that I was, sir; for five years in succession I was in them buildings and intimately acquainted — them, and
154 Judge Ward and I occupied the house after Mr. Lawson left here.

3d by same. Have you ever dealt in the business of buying and selling like property or are you otherwise conversant with the value of such property?

Answer. I had not built any property at that time. I have never bought and sold any buildings. I have bought land that buildings were on. I have been building since.

And further this deponent sayeth not.

JAMES A. NIGHBERT.

(Here follows diagram marked p. 155.)

155 Exhibit "L. & T.," filed with the foregoing deposition of H. S. White, is in the words and figures following, to wit:

156 *Deed. Lawson to Tilleston.*

This deed, made the 9th day of October, in the year of 1852, between Anthony Lawson and Ann Brook, his wife, of the first part,

and Edward T. Tilleston, of the second part, witnesseth: That in consideration of the sum of three hundred dollars to the said Lawson in hand paid by the said Tilletson, the receipt of which is hereby acknowledged, the said Lawson hath bargained and sold unto the said Tillotson that part of lots No. 1 & No. 2 in the town of Lawnsville lying above the following stakes: Beginning at a stake sixty poles above the northwest corner of lot No. 2, thence running back from the street across lot No. 2, 36 feet; thence running eastwardly 46 feet to a stake one hundred and six feet from the public square; thence a straight line to the river Guyandotte; thence with the line of said No. 1 lot up the river to the upper corner of said lot, and thence with the upper line — No. 1 & No. 2 to the street; thence with the street and the line — No. 2 to the stake first mentioned as a beginning corner of the land hereby conveyed; and the said parties of the first part covenants with the party of the second part that the- will warrant generally *to* title to the property hereby conveyed.

Witness the following signatures and seals.

ANTHONY LAWSON. [L. S.]
ANN BROOK LAWSON. [L. S.]

In Logan County Court.

CLERK'S OFFICE, *Oct. 9th*, 1852.

This deed was acknowledged before me by Anthony Lawson and Ann Brook, his wife, and admitted to record, and the said Ann B., upon examination separate and apart from her husband, and having the contents hereof fully explained to her, declared that she had willingly executed the same and that she wished not to retract it.

Test: WM. STRATON, *Cl'k.*

Copy. JOHN CHAPIN, *Clerk*,
By J. B. WILKINSON, *Deputy.*

157 (Endorsed:) "Filed before me on April 8th, 1882, by the defendant, Anthony Lawson, and at the same time the complainant, G. R. C. Floyd, objected to said filing. Teste: P. Fontaine, com. U. S. C., D. W. Va."

Exhibit "T. & S.," referred to in the foregoing deposition of H. S. White, is in the words and figures following, to wit:

158 *Deed. Tiletson to Straton.*

This deed, made the 9th day of October, 1852, between Edward T. Tilleston and William Straton, both of the county of Logan and State of Virginia, witnesseth: That in consideration of one hundred dollars in hand paid, the receipt of which is hereby acknowledged, the said party of the first part doth grant unto the said Straton the following-described tract or parcel of two lots of land, being part and parcel of lot- No-. 1 & 2 in the town of Lawnsville, Logan county, to wit: Beginning on the eastern or upper corner of lot No. 2, thence with the alley down to the river Guyandotte; thence down

the river along the line of lot No. 1 the distance of twenty-five feet; thence crossing said lot- No-. 1 & 2 to the street; thence up the street 25 feet to the beginning, including a small frame lately erected by Asbery C. Chambers on said part or parcel of said two lots: to have and to hold the same free from all persons forever; and the said party of the first — doth warrant generally the title to said part or parcel of said lot.

Witness the following signature and seal.

E. T. TILLETSON. [SEAL.]

Attest: HUGH BRYAN.

In Logan County Court.

CLERK'S OFFICE, *Oct. 9th*, 1852.

This deed was admitted to record.

Test: WM. STRATON, *Cl'k.*

Copy. JOHN CHAFIN, *Clerk*,
By J. B. WILKERSON, *Deputy.*

(Endorsed:) "Filed before me on April 8, 1882, by the defendant, Anthony Lawson, and at same time the complainant, G. R. C. Floyd, objected to said filing. Teste: P. Fontaine, com'r U. S. C., D. W. Va."

159 Exhibit "T. & B," filed with the foregoing deposition of H. S. White, is in the words and figures following, to wit:

160 *Deed. Tiletson to Butcher.*

This deed, made this 8th day of November, in the year 1852, between Edward T. Tilletson and Sarah, his wife, and Allen T. Butcher, witnesseth: That in consideration of the sum of two hundred dollars the said Tilletson and wife doth grant unto Allen T. Butcher all that part of lot- No-. 1 & 2 in the town of Lawnsville, Logan county, in the following bounds, to wit: Beginning *on* a stake one hundred and six feet from the northwest corner — No 2 in said town, thence east 89 feet along the street to a stake at the lower or northwest corner of a lot or parcel of said lot now owned and occupied by Wm. Straton; thence square across said lot- No-. 1 & 2 to the river Guyandotte; thence with the river line of lot No. 1 down to a stake 89 feet; thence across said lots No-. 1 & 2 to the beginning; and the said parties of the first part agree to warrant generally the title to the same.

Witness the following signatures and seals.

E. T. TILETSON. [SEAL.]

Attest: JAMES H. BAILEY.

In Logan County Court.

CLERK'S OFFICE, *November the* 18*th*, 1852.

This deed was acknowledged by E. T. Tiletson and admitted to record.

Test: WM. STRATON, *C.*

Copy. JOHN CHAFIN, *Clerk*,
By J. B. WILKINSON, *Deputy.*

(Endorsed.) "Filed before me on April 8, 1882, by the defendant, Anthony Lawson, and at the same time the complainant, G. R. C. Floyd, objected to said filing. Teste: P. Fontaine, com. U. S. C., D. W. Va."

161 Exhibit "T. & V.," filed with the foregoing deposition of H. S. White, is in the words and figures following, to wit:

162 *Deed. Tillotson to Vance.*

This deed, made and entered into 21st of Feb., 1853, between Edward T. Tiletson, of the first part, and Levi Vance, of the second part witnesseth: That in consideration of the sum of one hundred and thirty-three dollars the said par-y of the first part doth grant, bargain, and sell unto the said party of the second part a certain lot of ground in the town of Lawnsville, county of Logan, and State of Virginia, beginning sixty feet east of the northwest corner of lot No. 1, thence thirty-six feet south; from thence forty-six feet east; from thence 36 feet north; thence forty-six feet to place of beginning; to have and to hold the said lot of ground free from the claim of the party of the first part or any person claiming through him.

Witness the following signatures and seals; date the day above written.

E. T. TILETSON. [SEAL.]
SARAH L. TILETSON. [SEAL.]

In Logan County Court.

CLERK'S OFFICE, *Feb.* 21*st*, 1853.

This deed was duly acknowledged before me by Edward T. Tilleston and Sarah Tiletson, his wife, to be their act and deed and admitted to record, and the said Sarah, upon a private examination apart from her husband, declared that she had willingly signed, sealed, and delivered the same and that she wishes not to retract it.

Test: WM. STRATON, *Cl'k.*

Copy.

JOHN CHAFIN, *Clerk*,
By J. B. WILKINSON, *Deputy.*

(Endorsed:) "Filed before me on April 8th, 1882, by the defendant, Anthony Lawson, and at the same time the complainant, G. R. C. Floyd, objected to said filing. Teste: P. Fontaine, com'r U. S. C., D. W. Va."

163 Exhibit "T. & S.," filed with the deposition of H. S. White foregoing, is in the words and figures following, to wit:

164 *Deed. Tiletson to Straton.*

This deed, made the 23rd of February, in the year 1853, between Edward T. Tiletson and Sarah, his wife, of the first part, and William Straton, of the second part witnesseth: That in consideration of the sum of two hundred and twenty dollars the said parties of the first part doth grant unto s'd Straton all that part of lot- No-. 1 & 2 in the town — Lawnsville, Logan county, lying in the following bounds, to wit: Beginning on the north corner of small white house now owned by Asberry C. Chambers, thence down the street northwest with the street 80 feet to Allen T. Butcher's line; thence square across to the river Guyandotte; thence with the line of main lot No. 1 up the river 80 feet to the line of said Chambers, which line is described in the deed from said Tiletson to said Straton; thence with said line across lot- No-. 1 & 2 to the beginning; to have and to hold the same unto him and his heirs and assigns forever; and the said party of the first part doth warrant generally the title to the said property hereby conveyed.

Witness the following signatures and seals.

Attest: E. T. TILETSON. [SEAL.]
JAMES H. BAILEY. [SEAL.]

In Logan County Court.

CLERK'S OFFICE, *Feb. 23rd*, 1853.

This deed was acknowledged by E. T. Tiletson and admitted to record.

Teste: WM. STRATON, *Cl'k.*

Copy.

JOHN CHAFIN, *Clerk*,
By J. B. WILKINSON, *Deputy.*

(Endorsed:) "Filed before me on April 8, 1882, by the defendant, Anthony Lawson, and at the same time the complainant, G. R. C. Floyd, objected to said filing. Teste: P. Fontaine, com'r U. S. C., D. W. Va."

Exhibit "T. D. E.," filed with deposition of H. S. White, is in the words & figures following, to wit:

T. D. English to Report, County Court.

To the worshipful the court of Logan county:

The commissioner appointed by the court to determine and lay off the boundaries of the lots sold by the county of Logan as
165 part of public square of said county finds the metes and bounds to be substantially as follows:

Lot No. 1, originally sold to H. S. White, commencing at a stake at a corner formed by the junction of Jefferson avenue and Guyan-

dotte avenue, the latter being the main street of the town of Aracoma, said stake being situated N. 74 W. 40 feet from a cedar post corner to a lot of ground on the opposite or southeast side of said Jefferson avenue, now, or late, the property of Anthony Lawson; thence with the — of said Guyandote avenue N. 74 W. 46 feet; thence S. 14 W. 100 feet; thence 74 E. 46 feet; thence with the line of said Jefferson avenue N. 163 E. 100 feet to the place of beginning.

Lot No. 2, originally sold to Allen Butcher, commencing at a stake corner to lot No. 1 on the line of Guyandotte avenue, and thence with said line N. 74 W. 44 feet 8 inches; thence S. 16 W. 100 feet; thence S. 76 E. 44 feet 8 inches; thence with line of lot No. 1 N. 16 E. to place of beginning.

Lot No. 3, originally sold to James Lawson, commencing *on* a stake corner to lot No. 2 on the line of Guyandotte avenue, and thence with said line N. 76 W. 50 feet to a sunken stake; thence S. 16 W. 100 feet; thence with the line of lot No. 2 W. 16 E. 100 feet to the place of beginning.

Lot No. 4, originally sold to Anthony Lawson, commencing at a sunken stake corner to lot No. 3 on the line of Guyandotte avenue, and thence with the said line N. 74 E. 45 feet 2 inches; thence with the line of Washington avenue S. 16 W. 100 feet; thence S. 74 E. 45 — 2 inches; thence with the line of lot No. 3 N. 16 E. 100 feet to the place of beginning.

Lot No. 5, sold originally to Anthony Lawson, commencing at a point on Washington avenue 100 feet southwestwardly from its junction with Guyandotte avenue, & thence to lot No. 4, and thence with the line of said avenue S. 16 W. 60 feet; thence with line of land now or late of Anthony Lawson S. 74 E. 92 feet 11 inches; thence N. 16 E. 60 feet; thence with back lines of lot 3 *an* 4 N. 76 W. 92 feet 11 inches to the place of beginning.

Lot No. 6, sold originally to Reese Browning, commencing
166 at *at* a point on the line of Jefferson avenue 100 feet from the junction of the same with the Guyandotte avenue, and thence with said line S. 16 W. 60 feet; thence with the line of land now or late of Anthony Lawson N. 74 W. 92 feet 11 inches; thence with the line of lot No. 5, N. 16 E. 60 feet; thence with back line of lot No. 3, No. 2, No. 1, S. 74 E. 92 feet 11 inches to the place of beginning.

It may be necessary to say that the chain with which the measurement was made was not standard, but the relative proportions of the lots would be the same under any measurement, and that the meridian was the magnetic of the present year, and not the true meridian. All of which is respectfully submitted.

THOMAS DUNN ENGLISH,
Commissioner.

At Logan County Court. Nov. Term, 1855.

Thomas Dunn English, Esq., who was heretofore appointed a commissioner to a-certain & draft a report showing the metes and bounds of the several lots of ground sold off at the public square, this day made his reports and filed the same, and, no exception being taken

thereto, it is ordered that the deeds to be made to the purchasers of said lots conform to said report as respects the metes and bounds of said lots.

A copy.
Teste:

JAMES M. LAWSON, *D. C.*
To WM. STRATON, *Clk.*

Copy.

JOHN CHAFIN, *Clerk*,
By J. B. WILKINSON, *Deputy.*

(Endorsed:) "Filed before me on April 8, 1882, by the defendant, Anthony Lawson, and at the same time G. R. C. Floyd objected to said filing. Teste: P. Fontaine, com'r U. S. C., D. W. Va.

Exhibit "L. & B.," filed with the foregoing deposition of Anthony Lawson, is in the words and figures following, to wit:

167 *Deed. Lawson to Buskirk.*

This deed, made the 23rd day of December, in the year 1856, between Anthony Lawson and Ann Brook, his wife, of the county of Logan and State of West Virginia, of the first part, and Urias Buskirk, of the same county and State, of the second part, witnesseth: That whereas the said parties of the first part, in consideration of the sum of four hundred and fifty dollars, doth grant, bargain, & sell unto the said Urias Buskirk the following lot or parcel of land, known in the plan of the town of Lawnsville (now Aracoma) as part of lot No. 7, commencing at the southwest corner of said lot and running with the plank fence on the front side of said lot; thence with the plank fence on the east side of said lot to the north side or back fence of said *of said* lot; thence with said fence to west side (or rail fence); thence with the said rail fence & shop to the beginning, with its appurtenances, except a 12-foot alley that runs through said lot, as laid off in the said plan of the town of Lawnsville, it being understood that the said Lawson and wife does not sell the said 12-foot alley or any part of it; and the said parties of the first part covenant with the party of the second part that they will warrant specially the property hereby conveyed.

Witness the following signatures and seals the day and year aforesaid.

ANTHONY LAWSON. [L. S.]
ANN BROOK LAWSON. [L. S.]

In Logan County Court.

CLERK'S OFFICE, *December 30th*, 1856.

This deed was duly acknowledged before me by Anthony Lawson and Ann Brook Lawson, and she, the said Ann Brook Lawson, being examined by me privily and apart from her husband and having the contents of the deed fully explained to her, she, the said Ann Brook Lawson, acknowledged the same to be her act, and declared

that she had willingly executed the same and does not wish to retract it. This deed is therefore *is* admitted to record.

Test: WM. STRATON, *Clk.*

Copy.

JOHN CHAFIN, *Clerk,*
By J. B. WILKINSON, *Deputy.*

168 (Endorsed:) "Filed before me on April 8, 1882, by the defendant, Anthony Lawson, and at the same time the complainant, G. R. C. Floyd, objected to said filing. Teste: P. Fontaine, com'r U. S. C., D. W. Va.

169 *Depositions.*

JOHN V. BUSKIRK, of lawful age, being first duly sworn, deposeth and says, in answer to the following questions:

Question 1st by def'ts. State your age and residence.

Answer. I am over fifty years of age and reside at Logan Court-House, West Virginia.

Question 2nd. How long have you resided at Logan Court-House?

Answer. Over twenty years.

Question 3d. Are you acquainted with the lands in controversy in this suit?

Answer. I think I am with the most of it. I don't know that I know where all the lines are.

Question 4. State whether or not you have been over the lands or any of them at or near the top of the mountain back of Logan Court-House; and, if so, to what extent?

Answer. I think I have been over all or nearly all of it coon hunting & squirrel hunting, except a part on the lower side of the branch that comes into the river at Ham. McDonald's. I suppose this is at the lower end of the survey. I have — over and — both sides of the mountain and on the top of the mountain and along where I was informed that the lines ran, as far as the McDonald branch.

Question 5. State the character and quantity of the land
170 at the top of the mountain and on each side and extending down towards the town to the cleared land nearest the top of the mountain?

Answer. After leaving the cleared land the land on the mountain becomes very thin and rough & steep until we strike what is known as the big bench, which is a little strip about a half a mile long, containing four or five acres which could be cultivated. After leaving the bench the land becomes very steep, rocky, and rough all over the west side of the knob, and on the east side the land is rough and rocky & steep.

Question 6. State as near as you can about how far it is from the cleared land to the top of the mountain.

Answer. About three-quarters of a mile.

Question 7. In all the boundary you have described beyond the cleared land state as nearly as you can about what quantity would be useful for farming purposes?

Answer. About twenty acres, I think. There may be another piece of some ten acres that might be taken between the cleared land at town and the land that Lark Justice has cleared, though it would be steep.

Question 8. Were you in this country in 1857?

Answer. I think I was, though I am not positive. I know that I was here before that time.

171 Question 9. State if you were here in the years 1858 & '59.

Answer. Yes, I was here.

Question 10. Now state what, in your opinion, about the year's 1857, '8, & '9, was the fair value of the land per acre you have described, above and beyond the cleared land.

Answer. That is a question that I cannot answer, as I know nothing of the value of lands at that date, as I paid no attention to the value of wild lands.

Question 11. State, if you can, whether or not there was any market or demand for lands of that character and situated as that is, in this country at that time.

Answer. None that I know of.

Question 12. State if you were living in this place during the year 1871 and since.

Answer. Yes, sir; I was living here in 1871 and since.

Question 13. Now state what, in your opinion, was the value of the land per acre mentioned in question 10 in 1871.

Answer. If I owned it I would take one dollar per acre for it and would think I would be getting a big price. I mean this answer to apply to any time since I have known it.

Question 14. State what, in your opinion, was the value of the cleared hill land per acre, commencing at Kezer's branch

172 and running with the foot of the hill down to the road running down Guyan river, and with the road down to the line of the fifty acres sold to Isaac Morgan in 1871. I mean all the land that was cleared in 1871.

Answer. I think ten or fifteen dollars would be a big price for it.

Question 15. How much, in your opinion, is the present value of the cleared land, cleared since 1871, within the lines aforesaid?

Answer. I think it is worth about the same as the other cleared land.

Question 16. What part of the land has been cleared since 1871?

Answer. The hill land lying next to Ham. McDonald, bought by Larkin Justice.

Question 17. Are you acquainted with the character of the lands lying on the mountain back of the back line of the lands in controversy in this suit? And, if so, state its character and its value per acre.

Answer. I am acquainted with it as far as the McDonald branch; its character does not differ much from the other, and I would make no difference in its value.

Cross-examined by J. E. STOLLINGS, attorney for the plaintiff:

Question 1st by pl'ff. State whether or not you were acquainted

with the value or price of lands in the neighborhood of Logan Court-House in the years 1857 & '8?

Answer. I was not.

173 Question 2. State whether or not you were acquainted with the value or price of lands in the neighborhood of Logan Court-House in the year 1871?

Answer. I don't know of any lands being sold in the neighborhood of the court-house, except some of the land in controversy bought by Larkin Justice. I commenced about 1871 trading in wild lands, but not immediately about the court-house.

Question 3. State if you know of whom Larkin Justice purchased the land mentioned in your answer, the quantity purchased, and the amount paid therefor.

Answer. Justice purchased of Col. Floyd, but I don't know the price or quantity of land.

Question 4. State if you know the quantity and value of the bottom lands in controversy, with the exception of lots No-. 8, 9, 10, 11, & 12 of the town formerly known as Lawsonville in 1871.

Answer. I can't tell anything about it.

Question 5. What would have been a fair value of the land, including the bottom land, and the hill land as well as lots, in 1871?

Answer. I don't know what it would have been in 1871. I can't value it as a whole, because I don't know the quantity of hill or bottom land.

And further this deponent saith not.

JOHN V. BUSKIRK.

174 Adjourned until 8 o'clock a. m. of Monday, February 9th, 1880.

H. C. RAGLAND, *Com'r.*

FEBRUARY 9TH, 1880.

Com'r sat pursuant to adjournment of Saturday.

JOHN CHAFIN, of lawful age, being duly sworn, deposeth and says, in answer to the following questions:

Question 1st by def'ts. State your age, residence, and occupation.

Answer. I am forty years of age; reside at Logan Court-House, West Virginia, and am clerk of the circuit and county courts of Logan county, West Virginia.

Question 2. State whether or not you have examined the records in the clerk's office of the county court of Logan county in order to find any recorded evidence of sales of lands and lots made by the plaintiff, George R. C. Floyd, as agent of the defendant, John W. Johnston, of the lands in question in this suit or any part of them; and, if so, state all evidences of sales you have so found, and if you have copied them, file the copies with this your deposition.

Answer. I have examined the records of said court in relation to said sales and found the following contracts of sale of record in my office, to wit: To James M. Jackson; to H. S. White (2); to James

A. Sidebottom; to Anderson Blair & John Y. Morgan, & to
175 Harvey Walker and to Louisa Buskirk; copies of each of which I now file as parts of my deposition, marked Nos. 1, 2, 3, 4, 5, & 6, & 7.

Question 3. Are these all the evidences of such sales recorded in your office as clerk of the county court of Logan county?

Answer. These are all that I find after a diligent search.

Question 4. Are there any such contracts filed in your office unrecorded?

Answer. The only one filed in my office that I know anything of is one to myself, a copy of which I file here with my deposition, marked No. 8.

Question 5. Look at the map now shown you of the town of Aracoma, made by the plaintiff in this suit, and state which of the lots are the ones that you purchased as numbered on said map.

Answer. The lots that I purchased by my said contracts are Nos. 17 & 18, fronting on Stratton street. I also purchased from my father, who had purchased from the plaintiff as such agent, lots Nos. 19 & 20, adjoining the two I had purchased and fronting on Stratton street. I don't know where the written contract between the plaintiff & my father is, but suppose that my father has it.

Question 6. What was the purchase price of the two lots purchased by yourself, and how much, if anything, has been paid thereon, and to whom?

Answer. The purchase price of said two lots were three
176 hundred and fifty dollars. I paid J. M. Payne, as attorney for John W. Johnston, about fifteen dollars and have his receipt therefor; this is all that I have paid on said purchase.

Question 7. Did you execute ony note or notes for said purchase-money; and, if so, to whom were they payable and to whom delivered?

Answer. I don't think that I ever executed any note for said purchase-money.

Question 8. Was there any other paper or writing executed and signed either by the plaintiff Floyd or yourself in relation to said sale or purchase than the one of which No. 8 is a copy?

Answer. I don't think there was.

Question 9. State whether or not there is a street running parallel with Straton street, in the rear of the lots so purchased by you, of the same width of Straton street, not shown on the map.

Answer. There is no street opened, though I purchased the lots with the understanding that there was a forty-foot street running in the rear of the lots I purchased and parallel with Stratton street, which the plaintiff now admits to be the fact.

Question 10. Do you know, and if so state, the purchase price of lots Nos. 19 & 20, purchased by your father, as above stated, and sold by him to you?

Answer. Three hundred and fifty dollars was the purchase price.

177 Question 11. In the purchase of said lots from your father what were you to pay for them and to whom were you to pay?

Answer. I was to pay three hundred and fifty dollars for them, and the payment was to be made to the defendant Lawson.

Question 12. Was there any note or other writing executed by your father or yourself in relation to said purchase by you from him?

Answer. No; there was no writing.

Objected to by the plaintiff.

Question 13. State if you are acquainted with the land on the mountain back of Logan Court-House and the town of Aracoma, above and beyond the cleared land, and on both sides of the line of the lands in question in this suit?

Answer. I know nothing of the back lines except what has been shown me, if that line is correct; I am acquainted with the land on both sides of the lines.

Question 14. Describe the line, as near as you can, as has been shown you, from where it leaves Kezer's branch running back.

Answer. I don't know exactly where it leaves the branch, but, as shown me, it runs through the first gap back of the third large cliff on the ridge and between the two highest points that can be seen from the road at the mouth of Kezer's branch.

Question 15. Look at the copy of the plat now shown you, filed with plaintiff's bill in this case as Exhibit C, and state
178 whether or not if the back lines of the land in question from the gap you have mentioned are correctly laid down on said plat. You are acquainted with the lands on both sides of said lines?

Answer. Yes; I think I am.

Question 16. Now, state the character of the lands along said lines from the gap you have mentioned, the quality and nature of the soil—whether rough, rocky, or smooth, whether level or steep—and generally all you know in relation to it.

Answer. The soil is poor; it is rough and rocky and generally steep, and very little if any of it could be cultivated at all.

Question 17. How is it timbered?

Answer. I don't think there is any poplar timber on it; there is some oak and chestnut timber; I don't think it is well timbered for oak—I mean poplar timber for log-ing purposes.

Objected to by the plaintiff.

Question 18. How much, in your opinion, was the value of that land per acre along and on both sides of that back line in 1871 and about that time?

Answer. I should not consider it worth much, except for its timber, to persons owning land along the river; taken by itself it is not worth much. That along the ridge close to the line I don't consider over one dollar per acre.

Question 19. Suppose that the back line from the gap you have mentioned were so changed as to add four hundred and eight
179 acres to the tract in question, how much, in your opinion, would it have added to the value of the lands in question in this suit?

Answer. Four hundred and eight dollars.

Question 20. Are you acquainted with Harvey Walker, mentioned in pl't'ff's bill as one the purchasers of the land?

Answer. I am.

Question 21. Do you know what lot he purchased; and, if so, state its number on the map, of the town already shown you?

Answer. According to the written contract it is lot No. 6.

Question 22. State any knowledge that you may have as to said Walker's present residence and financial condition.

Answer. I understand that he lives in Maguffin county, Kentucky. I know nothing of his present financial condition, but understand that he is poor.

Question 23. Did he reside in this county formerly, and when?

Answer. He lived in this county from about 1867 until about 1874 or '5.

Question 24. What was his reputation, if you know, of his solvency or insolvency then?

Answer. I don't think he was considered as worth anything.

Question 25. Did he ever make any improvement on the lot he purchased?

Answer. Not that I know of.

Question 26. Are you acquainted with Henry Nighbut, one
180 of the purchasers mentioned in the plaintiff's bill, and is he white or colored?

Answer. I am acquainted with Henry Nighbut, and he is a black man.

Question 27. Do you know his reputation for solvency or insolvency at the time of his purchase or since? And, if so, state it.

Answer. I don't think he was worth anything; he may have had as much as sixty dollars' worth of property.

Question 28. Was he a married man and had he a family of children?

Answer. He had a wife, and one or more children.

Cross-examined by JOEL E. STOLLINGS, attorney for the plaintiff:

Question 1st. What improvements have you put upon the lots purchased by yourself of the plaintiff and of your father and the value of said improvements.

Answer. I have built upon the lots that I purchased of the plaintiff a dwelling-house, a smoke-house, and coal-house, together with some fencing, and have set out an apple orchard upon the lots I purchased of my father. The improvements are worth six hundred dollars.

Question 2. State whether or not you knew the value of lands in the vicinity of Logan Court-House in the year 1857, and from that period to the year 1871?

Answer. I don't think I did.

Question 3. State whether or not the woodland or back
181 lands in question have not considerable timber on the same. And, if so, what is that timber worth per acre for fuel and other purposes?

Answer. It has considerable timber on it that would do for fuel and some timber that would do for fencing purposes, but as to its value for fuel I could not fix any price, as fuel—I mean wood—has no market, as coal is used for fuel, except poplar wood, for cooking purposes.

Question 4. How much coal is there on the land in question, to your knowledge; what number of veins are there of coal and what is the quality of the same?

Answer. I don't know of but one vein, which is bituminous coal, and the thickness of the vein is about four feet; the quality of the coal is considered good.

Question 5. Owning the bottom lands adjoining the back lands in question, would you not put a greater valuation on the back lands than you have stated?

Answer. Yes; I would.

Re-examined by J. H. FERGUSON, Esq., attorney for the defendants:

Question 1. Look at the map of the town of Aracoma, already referred to, and state if the width of Straton street is correctly laid down and stated thereon; and, if not, what is the true width of said street?

Answer. It is not according to my understanding when I purchased lots Nos. 17 & 18; it is laid down upon said map as being thirty feet in width, while I understood it as forty feet, and it
182 is now fenced off forty feet wide.

Question 2. Give the location of the coal vein spoken of by you in this deposition.

Answer. It is just at the foot of the hill, up the coal hollow, and I suppose it is fifty feet above the bed of the river and within H. S. White's purchase.

And further this deponent saith not.

JOHN CHAFIN.

ANTHONY LAWSON, one of the defendants in this suit, of lawful age, being first duly sworn, deposeth and says, in answer to the following questions:

Question 1st by defendants. In the contracts between the plaintiff and yourself on the second of December, 1857, and August 3d, 1871, there are provisions to the effect that a part of the land sold or exchanged by you to him were to be conveyed with covenants of special warranty. Please state what lands these provisions of the contracts related to.

Answer. It included one-half, or what we supposed to be one-half, of a 700-acre survey made in my name; it lies on the hill and down below the branch at Hamilton McDonald's, and up the mountain or ridge to the back line on the mountain; and also a small survey on the mountain I bought of Cyrus Hinchman; these, I think, are all the then recent surveys that I owned.

Question 2. In your former deposition in this case you spoke of

coming into possession of the land under your father's will.

183 Now, state as nearly as you can what portions of the land in question you inherited from your father.

Answer. I inherited all except the portion of the 700-acre survey before mentioned.

Question 3. State whether or not you have ever received from the plaintiff Floyd or any one else any notes or any other written evidences of debt against the following-named persons mentioned in the plaintiff's bill as purchasers of portions of the lots and lands in question in this suit, to wit, Louisa Buskirk, James M. Jackson, J. B. Buskirk, Simpson Ellis, Thomas Avis, H. S. White, John & William Chafin, J. E. Rickett, and Henry Nighbert.

Answer. I never have.

Question 4. If you ever received any such notes or evidences of debt purporting to be executed by any of the other persons mentioned in said bill as such purchasers state it.

Answer. I received two notes on Harvey Walker, amounting in the aggregate to $300, and still have them, and have never collected anything on them.

I don't know whether I had a note on James A. Sidebottom, but I know that he paid me $153.00, as stated in my former deposition, nor do I recollect of any note or obligation on Larkin Justice, but I settled with him on a statement which he brought me.

Question 5. Have you heard the answer read of the plaintiff, Col. Floyd, to the 21st question-in-chief of his deposition given in this case on the 3d day of October, 1879?

184 Answer. I have just heard it read.

Question 6. Now state if at the making of the contract of December 2nd, 1857, or at any other time before or after that date you sold to the plaintiff the portion of the lands in question, known as the public square, and referred to by the plaintiff in his said answer as that portion of the public square upon which Robertson's old store stands, or any part thereof?

Answer. I never sold Col. Floyd any lots except those embraced in contract dated December 2nd, 1857, and the compromise contract dated August 3d, 1871. I never sold him the lot on which Robertson's old store-house stands or any part thereof.

Question 7. State as nearly as you can when and where the terms of the contract executed between the plaintiff, Col. Floyd, and yourself, and the 2nd of December, 1857, were first agreed on between you and him?

Answer. The agreement was made at Logan Court-House.

Question 8. Now state if you pointed out any of the lines of the land he was to take from you in the contract; and, if so, what lines?

Answer. My recollection is that I pointed out to Col. Floyd where the lines crossed the ridge from Kezer's branch as nearly as I could, as we could see that from where we stood, but no other lines.

Question 9. State whether or not you are acquainted with

185 the character and quality of the lands lying back of and adjoining the lands you sold to the plaintiff, beyond where

the lines crosses the ridge above Kezer's branch, or to the left of said branch?

Answer. I have been over it several times, but not lately; part of the lands are rough, rocky, and mountainous, and the balance is just the top of mountains running up together; there is some level land upon the top of the mountain, but not very much.

Question 10. How much, in your opinion, would it have added to the value of the lands you sold to the plaintiff if the back lines, after crossing the ridge above Kezer's branch before spoken of, had been so run as to include an additional quantity of four hundred and eight acres in the tracts?

Answer. To me it would have have added nothing to its value, as it lies too far from the river and is not accessible. The part most accessible is so rough and rocky it would have been worth nothing even for timber. In selling it in the aggregate, as to quantity, it might bring fifty cents an acre. I don't think it would bring any more than that.

Question 11. State whether or not, at the time the contract was agreed on as stated, the plaintiff and yourself were in sight of the bottom lands and the improvements thereon at and near the town.

Answer. Yes; we could see all the town that there was and the bottom near the court-house and the improvements thereon.

186 Question 12. State also, as near as you can, whether the plaintiff and yourself, at the same time, had in view any of the hill lands, and to what extent.

Answer. We could see the top of the first hill, back of the bottom, up to the first cliff, without any trouble.

Cross-examined by J. E. STOLLINGS, Esq., attorney for the plaintiff:

Question 1. State about what number of acres there were in that portion of the land exchanged or sold by you to the plaintiff by the contract of December 2d, 1857, which you inherited from your father?

Answer. I don't know what the quantity was.

Question 2. Did you or did you not, by the contract of December 2d, 1857, sell all the land you owned, including all town lots, from Kezer's branch down to the McDonald line, to the plaintiff at that time?

Answer. I sold all the lands, and included lots Nos. 8, 9, 10, 11, & 12, in the old plan of the town of Lawsonville (now Aracoma); this was all I sold to the pl't'ff.

Question 3. Did you or did you not, at the date of the contract of December 2d, 1857, own any other lands or lots in the town of Aracoma besides those mentioned in the contract?

Answer. I might have owned other lots, but I did not sell them to the plaintiff, Col. Floyd. I don't think I owned the Rob-

187 ertson store lot at that time—that is, the present Robertson & Nighbut store-house lot formerly occupied by justice.

Question 4. State on which one of the lots in the original plan of

the town of Lawsonville (now Aracoma) was situate the dwelling-house mentioned in the contract of December 2nd, 1857.

Answer. Upon No. 11.

Question 5. Now, state in what direction from the front of the dwelling was the lot or land on which Robertson's old store stands.

Answer. There was an alley running between my house and said lot, and the dwelling fronted up the river toward said lot; the lot ran from the main street back towards the river.

Question 6. Did you or did you not, at the time of making the contract, December 2nd, 1857, point out to the plaintiff that portion of the public square upon which Robertson's old store-house stands as part and parcel of the lands you were selling the plaintiff?

Answer. I have no recollectian of doing anything of the kind.

Question 7. State whether or not you did not dictate and write out the contract between yourself and the plaintiff of December 2d, 1857.

Answer. I neither wrote nor dictated it.

Question 8. Did you at any time before making the contract
188 of December 2, 1857, represent to the plaintiff that there was about 1,000 acres of land in the boundary sold to the plaintiff or at the time of executing contract?

Answer. I did not before the making of said contract at any time make any such representations. I don't know who mentioned the thousand acres at the time of the writing of the contract, but I know that I objected to mentioning *of* any number of acres, but Mr. John W. Johnston, who was writing the contract, said that it would make no difference, as he would describe it in the contract by its boundaries. I know that I never represented it as having a thousand acres at the time of making the contract or at any other time, but I did represent it as a tract that had never been measured and I did not know the quantity it contained.

Re-examined by J. H. FERGUSON, Esq'r, attorney for the defendants:

Question 1. Look at the plat of the town of Aracoma referred to by the witness Chafin in his deposition and state, by reference to that map, the locations of lots Nos. 8, 9, 10, 11, & 12, mentioned in your contract of December 2nd, 1857, with the plaintiff, Col. Floyd.

Answer. No. 8 lay, in whole or in part, to the right of No. 14. In the plat*t* No-. 9, 10, 11, & 12 are represented on the plat*t*, in
189 whole or in part, by No-. 14 & 13, and the street between thirteen & fourteen, and by the lot lying across Main street opposite lot No. 13, marked "hotel;" they all fronted the public square, represented by the letters "C. H." in the small square representing the court-house. As well as I recollect, all of the lots ran down to about the place represented by the alley running out from the river to Main street at the lower side of the lot, marked stable, and to the street running back towards the hill opposite to said alley, marked Coal Hollow street. (A copy of this map referred to

in question and answer is to be made and filed as a part of these depositions for the use of both parties by consent of the parties.)

And further this deponent saith not.

A. LAWSON.

JAMES A. NIGHBUT, of lawful age, being first duly sworn, deposeth and says, in answer to the following questions:

Question 1st by defendants. State your age, residence and occupation.

Answer. I am forty-seven years of age, reside at Logan C. H., W. Va., and by occupation a merchant and timberman.

Question 2. How long have you resided in Logan county?

Answer. Since 1844. I may have been absent during that time for three or four years.

190 Question 3. How long have you resided at and near Logan Court-House?

Answer. It has been my home principally since 1856.

Question. 4. State whether or not you have been engaged in buying and selling lands in Logan County?

Answer. I have bought and sold some tracts of land, but have not been engaged in it extensively.

Question 5. Were you acquainted with the value of lands at Logan Court-House or Aracoma and vicinity in 1857 and 1871?

Answer. I was not very well acquainted with lands at Aracoma or its vicinity in 1857. I had only been here at that time in business for myself a little over a year. I think I have some idea of the value of lands in that vicinity in 1871.

Question 6. Look at the copy of the platt filed with the plaintiff's bill in this cause, marked Exhibit "C," and state if you are acquainted with the lands on both sides of the lines laid down on said platt beyond the point where it crosses the ridge above and to the left of Keezer's branch to the sharp angle at the top of the platt.

Answer. I am.

Question 7. Now state the character and quality of the lands along and on each side of the lines, character of the soil—

191 whether rough or smooth, level or steep, rocky or otherwise.

Answer. The soil is poor, the ground is rough, steep, and rocky.

Question 8. How was it timbered inside of the line in 1871?

Answer. It was poorly timbered.

Question 9. Suppose the lines laid down on the platt referred to in question "6" from the place where it crosses said ridge designated on said plat by the word gap to the angle aforesaid to be the true line of the lands in question in this suit. How much, in your opinion, would it have added to the value of said lands if said line commencing at the point where it crosses said ridge as aforesaid were so changed and run as to include four hundred and eight acres more land in the tract in question in this suit?

Answer. If it was really my land I should not consider that it would add anything to its value, as I would not pay the taxes on it

for it, but for the purposes of sale it might add a value to the extent of fifty cents an acre for the four hundred and eight acres; I don't think it would be over that.

Question 10. State the character of the lands that such change of lines would include?

Answer. It would include principally rough, south ground,
192 rocky and steep and tops of mountains.

Question 11. How is it situated as to its accessibility from the town and from the river above and below the town?

Answer. There is no road to it, and it would be a very rough, steep way in any direction to get to it.

Question 12. Do you know anything as to any timber cut and hauled from the land in question in this suit; and, if so, by whom and under whose authority it was done, the value thereof, the price paid therefor, and to whom paid, and all you know in relation to it?

Answer. I do know of timber being cut and hauled from the land. The first timber that I know of being cut was in the year 1866. It was cut by a son of the defendant, Lawson, and myself. We supposed at the time that we were cutting it from the lands of the defendant, Lawson. We cut 868 feet, lineal measure, for which I paid the plaintiff, Col. Floyd, $86.80 in a settlement of November 22d, 1866. After we cut the timber Col. Floyd told us that it was his land, and I paid him for the timber. William F. Butcher hauled timber from the land under a contract of Urias Buskirk, who bought it from the pl't'ff, Col. Floyd, but how much he hauled or how much
he paid for it I don't know. Larkin & John Justice also
193 hauled timber from the land under a contract with Col. Floyd; also Larkin Justice and Marcian White hauled timber from the land, but how much any of them hauled or how much they paid for it I don't know.

Question 13. If you know of any rents arising from the lands in controversy, or any part of them, being paid to the pl't'ff Floyd state how much was paid and by whom.

Answer. I paid Col. Floyd for 65 bushels of rent corn at seventy-five cents per bushel; this corn was raised on the bottom opposite the mouth of Island creek. I settled with Col. Floyd for two years rent of store-house on lot No. 10 of the old plan of the town of Lawsonville (now Aracoma), the sum of $235.00; this is all that I know about rents.

Queston 14. State if you are the James A. Nighbut mentioned in the plaintiff's bill in this case as a purchaser from the defendant, James M. Payne, of a portion of the lots in question in this suit.

Answer. I am.

Question 15. Look at the — now shown you of the town of Aracoma, or a part of it, marked "Floyd's Addition," and state which of the lots represented thereon you so purchased?

Answer. I purchased from the s'd James M. Payne lots Nos. 1, 2, 3, 4, & 5, as laid down on said map, running from Main street to the
Guyandotte river. I hold the title bond of the defendant,
194 Anthony Lawson, and James M. Payne as attorney-in-fact for John W. Johnston.

Question 16. State as nearly as you can about how much land is included in your said purchase and at what price you purchased said lots?

Answer. About two and a half acres—it may be a little more or a little less—and the purchase price was five hundred dollars.

Question 17. State whether or not, in your opinion, five hundred dollars was a full and fair price for the said lots.

Answer. I think that a fair price, and I would take five hundred dollars back for it, without interest, if I could get pay for my improvements.

Adjourned until 8 o'clock to-morrow morning.

H. C. RAGLAND, *Com'r.*

TUESDAY MORNING, *February* 10*th*, 1880.

Commissioner sat pursuant to adjournment of yesterday.

JAMES A. NIGHBERT, a witness sworn and examined in chief on yesterday, appeared and deposed as follows, in answer to questions proposed by JOEL E. STOLLINGS, attorney for plaintiff, on cross-examination:

Question 1st. State whether or not you knew the value of all the lands in question in this suit in the years 1857 & 1871.

195 Answer. In 1857 I had been at the court-house for only a little over a year and knew nothing of the value of lands in that vicinity at that time; in 1871 I knew something of the value of the lands in question.

Objected to by the defendants as wholly immaterial.

Question 2nd. State what the value of the lands in question were in the year 1871, including the bottom and hill lands, but excepting the lots sold by Lawson to the plaintiff, Nos. 8, 9, 10, 11, & 12, in the contract of Dec. 2d, 1857, mentioned.

Answer. I can't answer it unless I know the amount of bottom land, which I don't, and I can place no estimate upon it.

Question 3d. What was the value of the bottom land, immediately at & below the court-house, of the lands in question, per acre, in the year 1871, exclusive of the lots named in last question?

Answer. One hundred dollars per acre, exclusive of buildings.

Question 4. How much was the lower bottom—that is, the one opposite the mouth of Island creek, worth per acre in 1871?

Answer. Forty dollars per acre.

Question 5. How much was the bottom land at the lower end of the tract, within the purchase of Isaac Morgan, worth per acre in 1871?

Answer. Thirty-five dollars per acre, buildings and all.

Question 6. What was the value per acre in 1871 of the cleared hill lands back of the bottom at the court-house and adjoining the same?

196 Answer. Fifteen dollars per acre, which I consider a high price for it.

Question 7. State whether or not if you were owning the bottom and cleared hill lands in question, or whether you owned them or not, taking the back or mountain lands in question in this suit in connection with the bottom & cleared hill land, would you not consider those back or mountain lands of a greater value than taken separate?

Answer. Of course, for farming purposes, I would. I should want the timber to keep up the farm with, as there is no other timbered land belonging to it.

Question 8. Then, taking the back or wood land, in the connection referred to in the last question & answer, what would have been the value of the same per acre in the year 1871?

Ans. I could not place it at over one dollar and a half per acre, outside of the cleared land. I include in this all the wood land inside of lines of the land in controversy.

Quest. 9. Did you or did you not know at the time you purchased of James M. Payne, agent and attorney for John W. Johnston, lots Nos. 1, 2, 3, 4, & 5, as laid down on the plat of the town known as Floyd's addition, that the plaintiff, as the former agent of John W. Johnston, had sold lots Nos. 1, 2, 3, & 4, of the lots aforesaid, to Louisa Buskirk?

Ans. My understanding was that lots Nos. 1, 2, 3, & 4 had
197 been sold by Col. Floyd, as attorney-in-fact for John W. Johnston, to Louisa Buskirk.

Re-examined by JAMES H. FERGUSON, Esq., attorney for the defendants:

Question 1. Look again — the map of Col. Floyd's addition to the town of Aracoma already shown you, and state which of the streets and alleys laid down thereon existed in 1871, in whole or in part, and which of them, if any, have been opened or provided for since.

Answer. Main street existed in part, as laid down on the map, to the corner of lot No. 11, opposite the point marked stable; thence across lot No. 1 to the river bank; thence with the bank of the Guyandotte river back of lots Nos. 1, 2, 3, 4, 5, 6, 21, 22, 23, 24, 25, 26, 27, 28, and 29, and none of the other streets existed at that time; the balance of Main street and the other streets and alleys appearing on said map have been laid off, opened, and provided for since.

Question 2. How many of the lots, as they now appear on said map, have dwelling-houses upon them at this time?

Answer. The lot, marked "hotel," and lots 5, 25, 8, 17, & 14, have dwelling-houses upon them.

Question 3. What other buildings, erected for any business purposes, are upon any of the other lots?

Answer. P. K. McComas has a law office on the corner of lot No. 13, and R. E. Lowe has a blacksmith shop on the corner of
198 lot No. 14; also an office known as Dr. Ricket's office; I don't know of any other buildings.

Question 4. About how many families reside in the town of Aracoma?

Answer. Eighteen, and several of them are not property-holders.

And further this deponent saith not.

J. A. NIGHBERT.

LOUISA RAGLAND, of lawful age, being first duly sworn, deposeth and says, in answer to the following questions:

Question 1 by def'ts. Are you the lady called Louisa Buskirk, mentioned in the plaintiff's bill?

Answer. I am.

Question 2. On your cross-examination, in your former deposition given in this case, you stated that at the time you made the purchase from the plaintiff, Col. Floyd, mentioned in the bill in this case, you were living separate and apart from your then husband; now state how it was that you came to be separated from him at that time, and where he then was.

Answer. He was charged with killing one Peter Morgan, and had broken out of jail and left the State, and I understood at that time, from correspondence with him, that he was in the State of Missouri.

Question 3. At the time of your husband's arrest for the murder of Morgan, and before, what business was he in, if any, at Logan Court-House—on what property did he live and carry on
199 business, and state whether or not your said husband and yourself were living together as husband and wife.

Answer. He was a boot & shoemaker by trade, kept a hotel, and carried on a farm. He lived on the property mentioned in the bill as lot No. 11, and on that part of it marked on the map of Floyd's addition as "hotel," and we were living on said property as husband and wife up to the time of said arrest.

Question 4. State on what property you resided from the time of his arrest until he broke jail and left, and from then until his return home, if he did return.

Answer. I continued to live on the same property until he broke jail and left and until he returned home, some time after my purchase from Col. Floyd.

Question 5. Who was the owner of the property you and your husband lived on while you lived there?

Answer. My then husband, Urias Buskirk.

Question 6. At the time of your said purchase from Col. Floyd had you any property of your own?

Answer. I had one horse that I claimed as my own, worth one hundred dollars.

Question 7. State when and how you acquired that horse and what you did with him?

Answer. I got him about a year after my husband left, and paid for him with money that I realized from the tavern, and I sold him and put him in the property where I now live.

200 Question 8. Did you ever sign or execute any paper in relation to said purchase, except the written contract of purchase and sale between Col. Floyd and yourself?

Answer. I don't think I ever did.

Question 9. State as nearly as you can when you removed from the property on which you resided as aforesaid to the property upon which you now reside.

Answer. I left that property in March, 1874, and came to the property where I now reside in November, 1875.

Question 10. From whom did you purchase the property where you now reside and what buildings, if any, were on it when you took possession of it?

Answer. I purchased it from Larkin Justice, and there was a small dwelling-house of two rooms, a kitchen, smoke-house, and stable upon it.

Question 11. What business, if any, have you been engaged in from the time you took possession of this property until now?

Answer. Keeping hotel.

Question 12. State whether or not the lots you bought of Col. Floyd had any buildings or other improvements upon them at the time of your purchase or since that time.

Answer. They had no improvements when I bought, even as much as a fence; no improvements have been put on them since, except a fence.

Question 13. How much have you paid on the property you now own and from what source did you derive the means of said payment?

Answer. I have paid $750.00 on the property and still owe
201 $50.00; I made the most of the money that I paid since I have been upon the property by keeping hotel.

Question 14. At the time you purchased this property from Larkin Justice were you still the wife of Buskirk?

Answer. I was not.

Cross-examined by JOEL E. STOLLINGS, Esq., attorney for the plaintiff:

Question 1st. State whether or not at the time you purchased the lots of Col. Floyd mentioned in the bill were you not dependent upon yourself for the support of yourself and children, and did you not have other means besides the horse spoken of in your depositions-in-chief?

Answer. My husband was full-handed when he left, and I had his means to go on, and I depended upon my industry and management to support myself and children; of course I made something upon the property, but I applied it to the payment of my husband's debts.

Question 2. What amount — debts against your husband did you pay out of the money which you made during the absence of your husband in the State of Missouri, spoken of in your examination-in-chief?

Answer. Eight hundred dollars.

Question 3. What is the amount in value of improvements that you have put upon the property where you now live since you
202 purchased it?

Answer. I don't know exactly, but some five or six hundred dollars.

Question 4. Did you or did you not take possession of the lots so purchased of Col. Floyd at the date of the purchase, and remain in possession of the same until the said lots were sold by James M. Payne, att'y for John W. Johnston, to Jas. A. Nighbert?

Answer. I took possession of the lots immediately after the purchase, and remained in possession of them for two or three years. I think there was two or three years that no one had them in possession.

Question 5. Were you not in possession of the lots so purchased of Col. Floyd after you were divorced from Uriah Buskirk?

Answer. Yes; I was.

Question 6. Did you not claim the lots under your contract with Col. Floyd after said divorce?

Answer. After the divorce I did not claim them; my husband after he came home objected to my taking and paying for them, as Col. Floyd had charged too much for them, and I told Col. Floyd so after the divorce, and he told me to go on and cultivate them; that they belonged to me and nobody else, and I told him that I was not able to pay for them, and asked him if they were sold again and did not bring as much as I had promised to give for them who would be the loser, and he said that he would, that I should
203 not lose a single twenty-five cents by it, and I cultivated them one year afterwards.

And further this deponent saith not.

LOUISA RAGLAND.

The following is a copy of Exhibit No. 1, filed with the foregoing deposition of John Chafin:

Agreement. Floyd to Jackson.

Agreement, made and entered into on this 3d day of November, A. D. 1871, between George R. C. Floyd and James M. Jackson, witnesseth: That the said George R. C. Floyd hath this day con-
204 tracted, bargained, and sold unto the said James M. Jackson all that certain lot of land situate in the county of Logan, State of West Virginia, to wit, No-. 12 & 9 in the map of the town, at the lower end of the town, at Logan Court-House, in said county, containing 100 feet front on Main street and running back to Stratten street same width, which said map is in the hands of said Floyd, with the name of said Jackson written upon the face of said lot- No-. 12 & 9, for which lots said Jackson is to pay to Anthony Lawson the sum of four hundred & fifty dollars in three annual instalments of one hundred and fifty dollars each, commencing on the first day of January, 1873, with interest from this date, and upon which payments the said Jackson will be entitled to a deed of conveyance to him of said lots to be made by said Lawson, as per agreement entered of record in the chancery order of Logan circuit court in the case of Lawson *v.* Floyd & others.

Witness the following signatures & seals.

GEORGE R. C. FLOYD. [SEAL.]
JAMES M. JACKSON. [SEAL.]

In Logan County.

RECORDER'S OFFICE, *the fourth day of November*, 1871

The parties to this contract acknowledged the signing and sealing thereof to be their act and deed before me.

Teste: THOMAS BUCHANAN, *Recorder.*

And on the 19th day of March, 1872, the annexed contract was admitted to record.

205 THOMAS BUCHANAN, *Recorder.*

Copy from Deed Book E, page 440, records of Logan county, West Virginia.

Teste: JOHN CHAFIN, *Clerk.*

The following is a copy of Exhibit No. 2, filed with the deposition of John Chafin aforesaid:

Agreement. Floyd and White.

Agreement, made on the 20th day of March, A. D. 1872, between George R. C, Floyd, attorney-in-fact for John W. Johnston, of the first part, and Hickman S. White, of the second part, witnesseth: That whereas, in a suit in equity lately pending in the circuit court of Logan county, State of West Virginia, involving certain lands therein mentioned and described and claims thereon, in which Anthony Lawson was plaintiff and the said Floyd and others defendants, the said suit was compromised, and, among other things, the said Floyd was to sell certain lands and lot- lying at and near Logan Court-House on a credit and the purchasers to pay over to said Lawson the purchase-money by instalments; and that said Floyd has sold to the said White a lot or parcel of said land lying in the side or face of hill immediately on the back of his house and lot where he now resides, at said court-house, which lot or parcel of land is now under fence and in cultivation and in the pos-
206 session of said White, under said sale (yet to be measured), at thirty-five dollars per acre, and to contain ten acres, including what may be necessary to make that quantity higher up the hill, said White to pay one hundred and sixteen and one-third dollars, or one-third a year, by instalments, as it becomes due, with interest thereon from date, and the coal in said land reserved, except what the said White may want for his own use.

(Signed) GEO. R. C. FLOYD.
H. S. WHITE.

In Logan County Court.

CLERK'S OFFICE, *the 20th day of March*, 1873.

The foregoing instrument of writing was this day acknowledged before me by George R. C. Floyd and admitted to record.

Teste: JOHN CHAFIN, *Clerk.*

Copy from Deed Book E, page 639, records Logan county, West Virginia.

Teste: JNO. CHAFIN, *Cl'k.*

Exhibit No. 3, filed with the deposition of John Chafin aforesaid, is in the words and figures following, to wit:

Common Land Deed. Floyd to White.

Agreement, made on the 21st day of August, 1873, between George R. C. Floyd, agent and attorney for John W. Johnston, party of the first part, and Hickman S. White, party of the second part,
207 witnesseth: That in a suit in chancery lately pending in the circuit court of Logan county State of West Virginia, wherein Anthony Lawson was plaintiff and the said Floyd and others were defendants, involving certain lands therein mentioned and described, which suit was compromised, and among other things the said Floyd was authorized to sell said lands on a credit, to be paid for by instalments, and the payments to be made to said Lawson, and the said Floyd has sold the said White ten acres of said lands near Logan Court-House, to be laid off and measured, commencing at the coal hollow near the grave-yard and running down and binding on a street which is to be laid off at the foot of the hill along down to and along the road leading down the river in that direction, and from the beginning before named and running up the coal hollow as far as the land is cleared in that direction, and running on the grave-yard hill for quantity, and including the grave-yard, but one acre to be excluded and counted out and laid off for a grave-yard, and pass-way to the same; for which the said White is to pay three hundred dollars in three annual instalments of one hundred dollars each, with interest thereon from this date till paid; but said Floyd reserves all the coal in said land.

Witness our hands and seals.

GEO. R. C. FLOYD. [SEAL.]
H. S. WHITE. [SEAL.]

Witness:
WM. STRATON.

208 In Logan County Court.

CLERK'S OFFICE, 21*st day of August*, 1873.

The foregoing instrument of writing was acknowledged before me by Geo. R. C. Floyd and admitted to record.

Teste: JOHN CHAFIN, *Clerk.*

Copy from Deed Book E, page 638, records Logan county, West Virginia.

Teste: JOHN CHAFIN, *Clerk.*

Exhibit No. 4, filed with foregoing deposition of John Chafin, is in the words and figures following, to wit:

Agreement. G. R. C. Floyd & Jas. A. Sidebottom.

Agreement, made and entered into on this 3d day of November, A. D. 1871, between George R. C. Floyd and James A. Sidebottom, witnesseth: That the said George R. C. Floyd hath this day con-

tracted, bargained, and sold unto the said James A. Sidebottom all that certain lot of land situate in the county of Logan, State of West Virginia, to wit: No. (8) eight, in the map of the town, at the lower end of town at Logan Court-H., in said county, containing 100 feet front on Main street and running back to Stretton street the same width, which said map is in the hands of the said Floyd, with the name of the said Sidebottom written upon the face of said lot No. (8) eight, for which lot said Sidebottom is to pay to Anthony
209 Lawson the sum of one hundred and fifty dollars in three annual instalments of fifty dollars each, commencing on the first day of January, 1873, with interest from this date, and upon which payment the said Sidebottom will be entitled to a deed of conveyance to him of s'd lot, to be made by said Lawson as per agreement entered of record in the chancery order of Logan circuit court in the cause of Lawson *v.* Floyd *et al.*

Witness the following signatures and seals.

GEORGE R. C. FLOYD. [SEAL.]
JAMES A. SIDEBOTTOM. [SEAL.]

STATE OF WEST VIRGINIA, *Logan County:*

RECORDER'S OFFICE.

I do hereby certify that George R. C. Floyd and James A. Sidebottom personally appeared before me and acknowledged the signing and sealing of the foregoing instrument of writing to be their act and deed.

Teste: THOMAS BUCHANAN, *Recorder.*

In Logan county recorder's office 17th day of March, 1872, the annexed agreement was admitted to record.

THOMAS BUCHANAN, *Recorder.*

Copy from Deed Book E, page 436, records of Logan county, West Virginia.

Teste: JNO. CHAFIN, *Cl'k.*

Exhibit No. 5, filed with the foregoing deposition of John
210 Chafin, is in the words and figures following, to wit:

Contract. G. R. C. Floyd with A. Blair & Julia Y. Morgan.

Memorandum of agreement, made and entered into this 14th day of August, 1873, between Anderson Blair, Julia Y. Morgan, and G. R. C. Floyd, attorney-in-fact for John W. Johnston, witnesseth: That whereas, some time in the year 1872, the said Anderson Blair purchased from the said G. R. C. Floyd, att'y, &c., a certain parcel of land, situate in the bottom field in the west corner of the same, on Guyandotte river, in the county of Logan, about one-half mile below Logan Court-House, supposed to contain three acres, more or less, together with the free use of a road or street running from the main big road, leading down the said river along on top of the river bank forty feet wide to the front part of the said parcel of land and of the same width; thence down by the side of the said parcel of

land fronting the said main road to the lower end of said lots, for which he, the said Blair, agrees to pay to Anthony Lawson, Sr., the sum of one hundred dollars per acre; and if the said parcel of land shall not contain three acres then to be a reduction in the said purchase-money at the rate of one hundred dollars per acre; and if the same contains more than three acres then to be paid for at the same rate, which said purchase-money is payable at the following periods, to wit, the first hundred dollars on the first day of January, 1873; the 2d on the first day
211 of January, 1874, and the 3rd on the 1st day of January, 1875, and when the same was fully paid to the said Anthony Lawson, Sr., that he, the said Lawson, in whom the legal title now is, would make to him, the said Blair, a good and sufficient title to the same: Now, therefore, the said Anderson Blair hereby bargains and sells and conveys to the said Julia Y. Morgan all his right, title, and interest whatever to the said parcel of land hereinabove named, with the free use of the said road or street attached to the same, as set forth in the above contract; and the said Julia Y. Morgan hereby agrees and covenants to assume the payment of the said three hundred dollars to the said Anthony Lawson, according to the instalments as hereinabove mentioned, as a consideration of the said parcel or lots of land, with the free use of the said road or street, as set forth in the above contract; and the said G. R. C. Floyd, att'y-in-fact for John W. Johnston, also hereby covenants and agrees to receive and accept the said Julia Y. Morgan as the purchaser, in the room of the said Blair, of the said land and the free use of the road or street of forty feet, as set forth in the above contract with himself and the said Blair; and he also hereby covenants and agrees that when the said Julia Y. Morgan pays to the said Anthony Lawson the said sum of money that he, the said Lawson, will make to her a good and sufficient title to the same.

212 Witness the following signatures and seals.

ANDERSON BLAIR. [SEAL.]
JULIA Y. MORGAN. [SEAL.]
GEO. R. C. FLOYD, [SEAL.]
Att'y-in-fact for J. W. Johnston.

In Logan County Court.

CLERK'S OFFICE, *August the 20th*, 1873.

The foregoing instrument of writing was acknowledged before me by George R. C. Floyd and Anderson Blair, and admitted to record.

Teste: JOHN CHAFIN, *Clerk.*

Copy from Deed Book E, page 637, records of Logan county, W. Va.

Teste: JNO. CHAFIN, *Clerk.*

Exhibit No. 6, filed with the foregoing deposition of John Chafin, is in the words and figures following, to wit:

Contract. Floyd to Walker.

This contract, made this 23d day of September, A. D. 1873, between George R. C. Floyd, attorney-in-fact for John W. Johnston, of the one part, and Harvey Walker, of the second part, witnesseth: That whereas the said Harvey Walker has this day purchased of the said George R. C. Floyd, attorney as aforesaid, one lot of land, situated in the town of Logan, W. Va., known as lot No. 6, on Dingess and Main streets of Floyd's addition to said town, for the sum
213 of three hundred dollars, as evidenced by two promissory notes, payable to Anthony Lawson, one note for one hundred dollars, due January 1st, 1874, the other note for two hundred dollars, due January 1st, 1875, both bearing interest from its date, and signed by the said Harvey Walker:

Now, therefore, upon the payments of said notes by the said Harvey Walker, the said George R. C. Floyd binds himself to deliver to the said Walker a good and sufficient deed of conveyance of said lot, with covenants of general warranty, from the said Anthony Lawson.

Witness our hands & seals.

GEORGE R. C. FLOYD, [SEAL.]
Attorney-in-Fact for John W. Johnson.

Witness:
JOSEPH M. BROWN.

In Logan County Court.

CLERK'S OFFICE, *Oct. 14th*, 1873.

This contract was this day admitted to record.

JOHN CHAFIN, *Clerk.*

Copy from Deed Book B, page 616, records of Logan county, West Virginia.

Teste: JOHN CHAFIN, *Clerk.*

Exhibit No. 7, filed with the foregoing deposition of John Chafin, is in the words and figures following, to wit:

Agreement, made and entered into on this 3d day of November, A. D. 1871, between George R. C. Floyd and Louisa Buskirk,
214 witnesseth: That the said Floyd hath this day contracted, bargained, and sold unto the said Louisa Buskirk all those four certain lots of land situate in the county of Logan, State of West Virginia, to wit:

The four lots as laid down on a map now in the hands of said Floyd of the lower end of the town, at Logan Court-House, in said county, and numbered on said map as follows, to wit: No. 1 (one), 2 (two), 3 (three), and 4 (four), and lying — Main street, on the river Guyandotte, and including the first alleys above the alley at the steam-mill site, for which land the said Louisa Buskirk agrees to pay to Anthony Lawson the sum of eight hundred dollars, divided into three annual instalments, commencing one-third on first day of January, 1873; one-third on the first day of January, 1874, &

the remaining third on the first day of January, 1875, with legal interest on the whole from this date till paid, and upon payment as aforesaid she will be entitled to a deed for said land from Anthony Lawson, per agreement made in chancery suit in Logan circuit court, A. Lawson *vs.* Floyd *et als.*

Witness our hands and seals on the day and year first above written.

GEO. R. C. FLOYD. [SEAL.]

her
LOUISA x BUSKIRK. [SEAL.]
mark.

In Logan County.

RECORDER'S OFFICE, *Nov.* 4, 1871.

George R. C. Floyd and Louisa Buskirk came before me and acknowledged the signing and sealing of the foregoing instrument of writing to be their act — day and year aforesaid.

THOMAS BUCHANAN, *Recorder.*

215 In Logan county recorder's office on this 28th day of November, 1871, the annexed and foregoing agreement was admitted to record.

Teste: THOMAS BUCHANAN, *Recorder.*

A copy from Deed Book E, page 411, records Logan Co., W. Va.

Teste: JOHN CHAFIN, *Clerk.*

Deposition of Anthony Lawson.

ANTHONY LAWSON, a witness of lawful age, being duly sworn, says:

1st ques. by att'y for def't Lawson. What is your age, place of residence, & where did you reside prior to 2d day of December, 1857?

Answer. I am 66 years of age and reside at Wytheville, in Wythe county, Va., and prior to Dec'r, 1857, I lived at Logan Court-House.

2d ques. by same. What relation do you sustain to this suit?

Answer. I am one of the defendants.

3d ques. by same. How long had you been the owner of the lands in question when you sold the same to the plaintiff, as stated in the first contract mentioned in the bill?

Answer. A little more than 10 years; I came into possession of the land under my father's will.

4th ques. by same. What was the character of your sale to the plaintiff of the land in question, in gross, by the tract, or by
216 the acre & what, if anything, was said by either of the parties upon that subject at the time of the execution of the contract?

(Excepted to by the pl't'ff.)

Answer. It was a sale of my property here to the pl't'ff in gross; there was no price fixed per acre; I sold it to him for $10,000

by the boundary as set forth in the contract, 2d Dec'r, 1857. There was nothing said at the time of the sale about it being sold by the acre; neither tract of land was to be measured. I took the tracts I got for $26,000 & sold the lands to Floyd for $10,000.

5th ques. by same. At what place and when were the terms of the contract finally agreed upon? What was said about the lands and who was present, and when and where and at what place was the contract reduced to writing? Give the history of the transaction that led to the exchange of lands & the circumstances connected therewith & in what capacity was the plaintiff acting in the trade as to part of the lands gotten by you in the said exchange.

(Excepted to by att'y for pl't'ff.)

Answer. The proposition to make the trade of the lands was made to me at Tazewell Court-House by Col. George R. C. Floyd; then, during the summer or fall of 1857, Col. Floyd & Col. A. S. Gray came to my house at Logan C.-House, and in a conversation Col. Gray
217 agreed to give me time on the debt I was to pay for Col. Floyd, and it was at that time the trade was agreed on between Col. Floyd and myself, but the contract was not reduced to writing till the 2d day of Dec'r, 1858, at Tazewell C.-House, Virginia. The contract was I was to take the Smythe & Waterford lands in Burk's Garden at the gross sum of $26,000 and Floyd was to take the Logan property at the gross sum of $10,000 in part payment for the Smythe & Waterford lands. I was to pay the difference of $16,000 to Gray & Smythe, as set out in the contract. I agreed to pay $16,000 for the Waterford tracts in consideration that they would take my Logan land at $10,000, I having been offered the Waterford lands at $10,000 cash, & could have bought it for that sum. The said pl't'ff was acting as agent for his brother Jno. B. Floyd as to the Waterford land, the legal title to said lands being in said Jno. B. Floyd.

6th ques. by same. What representations, if any, did you make to the said plaintiff as to the quantity of acres of the Logan lands?

Ans. Nothing was said about quantity that I recollect of until the contract was reduced to writing, the 2nd Dec'r, 1857.

7th ques. by same. What knowledge, if any, did you have at the time said contract was agreed upon, as well as at the
218 time it was executed, as to the quantity of the lands in question?

Answer. None, so far as measurement was concerned. I had been over them & had seen them, but had never had them surveyed or known of them being surveyed.

8th ques. by same. What knowledge, if any, did you have at the time of the execution of the last contract mentioned in the bill as to the quantity of said Logan land, and what, if anything, was said on the subject by the parties, or any of them, yourself included?

(Excepted to by att'y for pl't'ff.)

Answer. I had no more knowledge then as to the quantity than I did at the time of entering into the contract of Dec'r 2, 1857. Mr. Johnson was writing the contract of Aug. 3d, 1871. He asked the

quantity of acres. Col. Floyd answered, about 1,000 acres. I replied that I would guarantee no quantity of acres whatever; that the tract was made up of several tracts & parts of tracts, & that I didn't know how much was in it. Mr. Johnson then said he would put it about 1,000 acres, or estimate it at that quantity, and said he would set out the boundaries of said land as all the land that I owned between Keezer's branch & to the McDonald line, as set out in the contract of August 3d, 1871.

219 9th ques. by same. Describe the property, as nearly as you can, in question in this suit at the time of the execution of said first contract, the number of lots which had been laid off thereon, with the buildings thereon, & the value of said lots and buildings, the quantity of acres of bottom land not laid off into lots, the value thereof as nearly as you can give, & the value of the hill lands near the bottom, as well as the top & high upon the mountains, so far as you have seen these lands.

Answer. I always thought there was from 20 to 25 acres of bottom land; then the cleared land adjoining the bottom lands that I had under fence, I suppose, was from 80 to 100 acres, which was in pasture in Dec'r, 1857; then the balance of the lands was in the woods to the back line. Below town there was a field, including a bottom and hill of about 25 acres lying below town, and below that there was the tract sold to Col. Isaac Morgan by Col. Floyd, containing about 50 acres, about two-thirds of which was bottom land. The lands lying back of and between the two last-mentioned tracts was wood land to the back line; I have no idea as to the quantity of — there is. No-. 8, 9, 10, 11, & 12 lots were laid off at the time

220 of the contract of 1857, with the buildings thereon, consisting of a large frame house in the shape of an L, 40 or 50 feet each way, 2 stories high, portico in front, and back porch; then I had a frame kitchen adjoining to covered hall between the kitchen and house, meat-house, well and well-house; then I had a good double house, now on the lot, and a good stable on the lower end of the lot; these were on 11 & 12; *which* I always estimate the value of lots Nos. 11 & 12 with the aforesaid buildings to be worth $3,000. On lot No. 10 I had a log — one and ½ story high, 20 by 30 feet; then I had a log lumber-house about 18 feet square; a small frame salt-house, counting room to the back of the store-house, about 20 feet by 10; on the same lot I had a frame carriage-house; also on the same lot a good log blacksmith shop; the value of lot No. 10 & buildings — about $1,200. I had on the bottom land a double barn & double corn-crib. These buildings were worth about $300. Then the building my father lived in, a log building, finished off very neatly, with porches on each side, smoke-house & stable; also a well, but no well-house; estimated worth of these buildings, about $500. I estimate the value of the bottom lands not laid off into lots at about $100 per acre. I valued lots Nos. 8 & 9, on which there *was* no buildings, at about

221 $200 each, and the value of the bottom land below town I estimated at $30 per acre, and the quantity of same at about 15 acres. The bottom part of the land sold by Col. Floyd to Col.

Morgan I estimated at about $20 p'r acre. I can fix no estimate of the value of the hill lands or back lands in 1857.

10th ques. by same. If there is such a deficiency in the estimated quantity of said Logan lands, as claimed by the plaintiff, and you had known the fact at the time of the contract of sale from you to the plaintiff would you have sold them for any less sum in the contract of sale as made by you and the plaintiff than the sum for which you did sell them by that contract?

Answer. I would not have taken one dollar less, no matter what the deficiency was, and taken the Waterford land at $16,000. I consider the chief value of my Logan lands consisted in the town lots & buildings & the bottom land and coal bank.

11th ques. by same. Then what was the principal or chief inducement that led you to give the $16,000 for the Waterford lands?

Answer. It was the taking of the Logan lands in gross, at $10,000, and that was the inducement and the only reason in fact for buying the Waterford land.

12th ques. by same. How much of the purchase-money of said lands has been paid you, and how and by whom was it paid?

222 Answer. I have received direct from sales of this land $153 from Sidebottom; from Larkin Justice, $719.25; from J. A. Nighbert, $450, and I received some amounts from Mr. Johnson; can't say exactly what, but think the amount was something over $4,000.

13th ques. by same. If you know, state what was understood and intended by the *by the* contract of August 3d, 1871, as to its relation, bearing, or effect upon the contract of Dec'r 2d, 1857.

(Excepted to by pl't'ff's att'y.)

Answer. It was intended to annul and abrogate the contract of 1857, and settle all matters in dispute that was then invalid in a suit to subject the Logan lands for the payment of purchase-money.

Cross-examined:

1st quest. by plaintiff. How long had you been acquainted with the Logan lands prior to your becoming the owner in 1847?

Answer. About 20 years.

2d question by same. Who was the owner previous to your becoming the owner?

Answer. My father.

3d quest. by same. How long had he owned it previous to the year 1847?

Answer. He owned a part of the land in 1827, and purchased the balance at different times thereafter.

223 4th quest. Name what tracts you can that make up the land purchased by Col. Floyd in 1857.

Answer. I don't recollect the different tracts from memory.

5th quest. by same. In the purchase of the original tracts and the different tracts thereafter was the number of acres given in the different purchases?

Answer. I think they were, but can't tell what.

6th quest. by same. How does the value of the bottom land compare now with its value in 1857?

Answer. I think the value then about as the value now, although I learn they — asking more now for them than then.

7th quest. by same. Have not the same lands been selling for much more within the past few years?

Answer. I understand they have.

And, no further questions being asked, further this deponent saith not.

A. LAWSON.

JOHN DEJARNETT, another witness, of lawful age, being introduced on the part of the defendant Lawson and being duly sworn, says:

1st ques. by att'y for def't, A. Lawson. What is your age, place of residence; where did you reside in December 1857; were you acquainted with the property and buildings exchanged by the said Lawson to the pl't'ff Floyd? And, if so, state the value of
224 the buildings on said property in December, 1857, and what was your opportunities for being acquainted with said property and buildings?

Answer. Sixty-two years; I reside at Logan Court-House; resided at the same place in December, 1857, and was acquainted with the property and buildings exchanged by Lawson to Floyd at the time of said exchange; I value the buildings on lot No. 10 at $1,000; on lots Nos. 11 & 12 at $3,100, and value the buildings on the bottom land at $400. I worked on the buildings and lived 2 or 3 years with Col. Lawson.

And further this deponent sayeth not.

JNO. DEJERNATT.

Mrs. LOUISA RAGLAND, another witness, of lawful age, being duly sworn, deposes and says:

1st quest. by att'y for A. Lawson. Are you the same person who purchased of the plaintiff, Col. Floyd, at Logan C. H., 4 lots of land at said place? If so, — when and at what price, how many lots you purchased, whether you at the time of said purchase was a married or single woman, & whether or not at the time of said purchase or at the time the payments became due you was able to have paid for the same.

Ans. I am the same person that purchased some lots of Col. Floyd, viz., 4 lots at the price of $800; I was married at that time;
225 I was not able at that time to pay the first purchase nor to pay for the lot.

Cross-examination:

1st ques. by pl't'ff. Were you not living separate and apart from your husband at that time?

Answer. I was, though we hadn't separated finally.

2nd ques. by same. After said purchase did you not purchase the property you now live in at about the same price?

Answer. About 3 or 4 years after I made the purchase of Col. Floyd I purchased where I now live for the sum of $800.

3d quest. by same. Have you not about paid for the property you afterwards purchased?

Answer. Yes, I am; but 50 dollars due upon it.

4th quest. by same. Have you not also made valuable improvements on said lot; and, if so, to what the value of same?

Answer. I have made improvements to the value or three or four hundred dollars. I have made the money since I came here.

5th quest. by same. Have you not paid a considerable amount of money towards the satisfaction of your former husband's debts; and, if so, how much?

Answer. I have paid about $500.

And further this deponent saith not.

LOUISA RAGLAND.

226 J. M. PAYNE, being first duly sworn, deposes and says:

1st quest. State your name, age, residence, and occupation.

Ans. J. M. Payne; 31 years; Charleston, W. Va.; lawyer.

2d quest. Please state what, if anything, you have had to do with the transactions of the plaintiff in this cause and the defendants, John W. Johnston and Anthony Lawson.

Ans. I was employed by Mr. Johnston, as well as I now recollect, in the winter of 1875–'6 to sell certain lands situate at Logan Court-House, being the same involved in this controversy, and to
227 do whatever I deemed necessary to collect the claim of Mr. Johnston which he held against said lands. The plaintiff had been agent of Mr. Johnston prior to my employment, and at the spring term of the circuit court of Logan county I met the plaintiff at Logan C. H. and consulted with him as to the condition of affairs. He told me of the sales he had made, which were about the same set forth in the bill. I called upon all the parties that I could find to whom he had made such sales and also examined the records in the clerk's office of Logan county court. I could not find any writings concerning said sales of record or otherwise except those contracts made with H. S. White, Jas. M. Jackson, Jas. A. Sidebottom, Julia Y. Morgan, and Anderson Blair. This last contract with Mrs. Morgan and Blair was for 3 acres of land in the lower bottom and was afterwards sold by Mrs. Morgan to Lailson Justice. Col. Floyd told me that he had taken written obligations from each one of the purchasers to pay the purchase-money to Anthony Lawson, and I think he said some of them were recorded and others were delivered to Mr. Lawson. I went to Mr. Lawson to get these obligations, but Mr. Lawson assured me that he had none. Upon the information I received I instituted the suits against the following parties, H.
228 S. White, J. M. Jackson, Henry Nighbut, Thomas Avis, Simpson Ellis, Jas. B. Buskirk, and William Chafin, and, for certain reasons not deemed by me necessary to mention, I forebore to

institute any suits against the other parties to whom Col. Floyd stated he had made sales. Col. Floyd requested that I should bring the suits and said he wanted all of his sales enforced.

3d Quest. Why did — not institute suit against Louisa Buskirk to enforce the sale made to her.

Ans. In the first place, I did not find any contract in writing with her for the sale to her of the said land, but the controlling reasons were that she was a married woman, wife of Uriah Buskirk, when Floyd sold to her, and besides had no separate estate. I met Louisa Buskirk and her husband in February, 1873; they kept a hotel at Logan C. H. and I was a guest there for a few days; they were living together then as man and wife and were divorced by the circuit court of Logan county in the spring of 1874 or 1875. The suit was brought for a divorce by Mrs. Buskirk and I was counsel for her husband in the suit. Besides all this, she positively refused to carry out the contract, and I then did not believe and don't now that the contract could be enforced against her.

229 4th Quest. What is the character of the map and plat which the plaintiff refers to in his bill and which he says you disregarded?

Ans. The map has never been put upon record, but kept by Floyd or his agent, H. S. White. I have examined it several times. It is not well *made* off by any means, having more streets than necessary. I think the lots between Main street and Straton street and between Straton street and 3rd St. are 100 feet square, there being but one row of lots between the streets, making all the lots front on the streets on either side of them. There *is* no other streets than these three, except Dingess street, which runs at right angles with these. There are some alleys, I believe, and a street to be called Coal Hollow street, laid down upon it, but the Coal Hollow street is not open and has never been since I have known the land. That part of the land through which Coal Hollow street was to run, and also the land which I sold to John V. Buskirk, which borders on it, and bounded by it on the northwest side, has been in cultivation ever since I have known the land. It is not true that I disregarded the map in my sales, but, on the contrary, I was guided and controlled by it in my sale to Jas. A. Nighbert. There was not a single lot laid

230 down on the map included in my sales to John V. Buskirk and Larkin Justice. It will be seen by reference to the plaintiff's bill that he states that the sale made by me to Larkin Justice embraced "all the remaining town lots in the lower bottom, there being ten or twelve of the same," and that my sale to John V. Buskirk embraced "7 to 10 lots," thus showing that he did not know what number of lots at his usual size of 100 feet square the several tracts would make, and that there were no lots laid off there. There are no streets or alleys in the lower bottom, but there is a road between the lot of about two acres, sold to Thos. Avis by Floyd, and the land sold Larkin Justice by me, and when Floyd sold to Avis and to Julia Y. Morgan and Henry Nighbert, the old colored man, he did not sell by lots, but by the acre.

5th Quest. Was the prices for which you sold the three several

parcels of land to Jas. A. Nighbert, Larkin Justice, and John V. Buskirk fair and reasonable, and how did such sales affect the value of the adjacent property—injuriously or otherwise?

Ans. I regarded the prices very fair for the times. I consulted other parties who were more familiar with the value of
231 the land, and from the opinions I gathered and from the information I had of the value of real estate in that place I based the prices of my sales, and I am at a loss to see how the adjacent lands could be injured by these sales. No communication is cut off from any of the lands by reason of these sales, nor is the shape of the residue of the lands altered thereby to the injury of it. In the matter of sales, I, acting for Mr. Johnston, was endeavoring to sell the land at the very best prices I could obtain for it, believing that it was necessary to do so in order to make the land pay the debt which he had against it.

6th Quest. What was the financial condition of the parties to whom Col. Floyd had sold when you were employed by Mr. Johnston in these matters?

Ans. J. M. Jackson was in doubtful circumstances; John Chafin I considered good; Wm. Chafin was insolvent, and had put no improvements on the two lots he purchased; H. S. White was good for his debt; Dr. J. E. Ricketts improved the lot he bought, but had not, I don't think, done so then; he had no other property available that I know of; Thos. Avis was and is a poor man; Henry Nighbert is a negro, and is poor; Harvey Walker had left the State, and
232 I could find no property belonging to him and no contract of any sale to him; Simpson Ellis had but little property—none available; James B. Buskirk was and is still in a condition to pay for his lot and has paid, at my request, something over $100 on the taxes of the whole property, and is entitled to a credit for that amount on his note.

7th Quest. Have any taxes on said property been paid by John W. Johnson since your employment?

Ans. Yes; about $108.00 was paid by him early in last September. I had arranged between J. B. Buskirk and the sheriff of Logan — for the payment of the taxes of 1873, '4, '5, & '6, so far as the purchase-money of Buskirk would go towards the payment of them, but the arrangement was stopped by the injunction. The tax tickets which Mr. Johnston paid were paid through me, and I here file them as part of my deposition, marked Exhibits X, Y, & Z.

And further this deponent saith not.

J. M. PAYNE.

Subscribed and sworn to before me this 7th day of May, 1880.

H. D. SHREWSBURY,
Notary Public for Kanawha County, West Va.

Exhibit "Z," referred to in the last foregoing deposition,
233 is in the words and figures following, to wit:

"Mr. Lawson, Anthony, Sr., in Logan district, Floyd to pay, to the sheriff of Logan county, W. Va., Dr.

1878.

	Valuation.	State tax, 20c. on $100.	State school tax, 10c. on $100.	County tax, 95c. on $100.	District school tax, 50c. on $100.	District building tax, 30c. on $100.	Special levy, $1.30.	Total.
Tax on 25 acres, Guyan. river To $1.00 and tax on	6 25	1	1	12	3	2	17	
Tax on 350 acres land, ½ of 700, back survey	87 50	18	9	83	44	26	96	
Tax on 25 acres land, Mt. back, C. H.	25	5	3	24	13	8	33	
Tax on 21 acres land, bottom, C. H.	990	1 98	99	9 41	4 95	2 97	12 88	
Total tax								37 09

Received payment,

JNO. E. PECK, *Dep.*,
For C. M. McDONALD, *S. L. C.*"

(Endorsed:) "This ticket paid by James M. Payne for J. W. Johnson. Jno. E. Peck, dep., C. McDonald, S. L. C."

Exhibit "X," filed with deposition of J. M. Payne, is in the words and figures following, to wit:

"Mr. Lawson, A., Sr., in Logan district, to the sheriff of Logan county, W. Va., Dr.

1878.

	Valuation.	State tax, 20c. on $100.	State school tax, 10c. on $100.	County tax, 95c. on $100.	District school tax, 50c. on $100.	District building tax, 30c. on $100.	Special levy, $1.30.	Total.
To $1.00 and tax on—								
Tax on ¼ lot 10, old plan, Aracoma	620	1 24	62	5 89	3 10	1 86	8 04	20 75
Tax on ¼ lot 9, old plan, Aracoma	500	1 00	50	4 75	2 50	1 50	6 50	16 75
Tax on ¼ lot 8, old plan, Aracoma	500	1 00	50	4 75	2 50	1 50	6 50	16 75
Total tax								$54 25

Received payment,

JNO. E. PECK, *Dep.*,
For C. M. McDONALD, *S. L. C.*"

(Endorsed:) "This tax paid by James M. Payne for J. W. Johnson. Jno. E. Peck, dep., C. McDonald, S. L. C."

234 Exhibit "Y," filed with the deposition of J. M. Payne aforesaid, is in the words and figures following, to wit:

"Mr. Lawson, Anthony, Sr., in Logan district, Floyd —, to the sheriff of Logan county, W. Va., Dr.

	Valuation.	State tax, 20c. on $100.	State school tax, 10c. on $100.	County tax, 95c. on $100.	District school tax, 50c. on $100.	District building tax, 30c. on $100.	Special levy, $1.30.	Total.
6 acres land, Guyan. river— To $1.00 and tax on	72	14	7	68	35	22	94	2 40
Tax on 109 acres land, Guyan	137 34	27	14	1 30	69	41	1 79	4 60
Tax on 100 acres of land Keser's br.	300	60	30	2 85	1 50	90	3 85	10 00
Total tax								17 00

Received payment,

JNO. E. PECK, *Dep.*,
For C. M. McDONALD, *S. F. C.*"

(Endorsed:) "This ticket paid by James M. Payne for J. W. Johnson. Jno. E. Peck, dep., C. M. McDonald, S. L. C."

235 *Deposition of John W. Johnston.*

JOHN W. JOHNSTON, of lawful age, having been duly sworn, deposes and says:

Quest. 1st by JOHN M. JOHNSON: State your age, residence, and occupation.

Answer. I am 60 years old; resident of Washington county, Virginia; a lawyer by occupation.

2d Q. Are you acquainted with the plaintiff, G. R. C. Floyd, and what relationship, if any, exists between him and yourself?

Answer. I have known Mr. Floyd for about 40 years, and I married his sister.

3d Q. Are you acquaninted with the defendants, Anthony Lawson and James M. Payne; and, if so, how long have you known them?

Answer. I know Mr. Lawson very well; have known him for about 25 years, I think. I never saw Mr. Payne but once; that was about one month ago, tho' I have been corresponding with him for about three years; he is my agent for the sale of the land in Logan Co., West Virginia, named in this suit.

4th Q. State all you may know in relation to the compro-
236 mise mentioned in the plaintiff's bill and evidenced by Exhibit "B," filed therewith, what led to it, and at whose instance it was made, and at whose instance, suggestion, or request you became a party to it, and all that the plaintiff, Floyd, said in regard to it.

Answer. There was a suit pending in Logan county, West Virginia, between Messrs. Floyd and Lawson. I was made a party to that suit, but upon whose motion I don't know, as I never saw the record; it was the pendency of that suit that led to this compromise; it was a compromise of that suit; at this distance of time I cannot recall who made the first suggestion to settle the matter out of court, but Mess. Floyd, Lawson, and myself met by mutual arrangement at Tazewell Court-House, Virginia, in the latter part of July, 1871. I think that all three of the parties were quite anxious to settle it, and after some days' consultation we finally agreed upon the compromise, which was very acceptable to all the parties. It is impossible for me to tell all that Mr. Floyd said in regard to this matter. He expressed himself as relieved by the compromise. It will be seen by the terms of the compromise that when enough land had been sold to pay off the Lawson debt the
237 land unsold by me or my agent was to be conveyed by the said Lawson to the said Floyd. Mr. Floyd said that the time allowed in the compromise to make the payments to Lawson was ample, and that enough land could easily be sold to meet the payments as they became due; that there was a demand for lots at Logan Court-House, but sales could not be made, owing to the condition of the title and litigation about the property, but compromise now removed these difficulties and that sales could readily be made. After the compromise was entered into I gave Mr. Floyd a power of attorney constituting him my agent to make sales, but giving him no authority to collect or receive money. Mr. Floyd rated the land high and thought he would have a handsome surplus after paying the debt.

5th Q. State, so far as you know, any and everything done by the said plaintiff, as your agent, since the date of said compromise and before the institution of this suit; when, if at all, he ceased to act as your agent, and why, and what reports, if any, he ever made to you of his actings and doings as such agent, and, if you removed the said plaintiff from his said agency, state in full the reasons why you did so.

238 Answer. All the information, verbal or written, that Mr. Floyd ever furnished me of his transactions as my agent is contained in four letters from him to me—one dated January 18, 1873, marked "F" 1 7; one dated June 12th, 1873, marked "F" 2 7; one dated July 22, 1873, marked "F" 3 7; one dated Aug. 15, 1873, marked "F" 4 7. These letters were made exhibits with my answer in this case, and I also filed them. In answer to this question, as part of my deposition, I removed Mr. Floyd as my agent, I think, in August, 1874, tho' I haven't the exact date of the paper removing him. He never made any report to me of his actings or doings as my

agent except those contained in the above-named letters. I removed Mr. Floyd as my agent because I learned from his own letters that he had failed to provide the means from the sales of lots to pay Mr. Lawson the amount due him. His letter of the 18th of Jan'y, 1873, reports about $2,200.00 of sales, only one-third of which was due the first of that month. Supposing the whole of this $2,200.00 to be good, one-third of it fell upwards of $1,100 short of paying Lawson the amount then due him. In his letter to me of June 12, '73, Mr. Floyd made this statement, "that he did not know that I was held for the debt," which statement surprised me greatly. In his letter to me of the 22d of July, 1873, Mr. Floyd reported the sales as about $2,100.00, or $100 less than his report of
239 Jan'y previous. Another reason for the removal of Mr. Floyd was that the compromise of Aug. 3, '71, and the power of att'y from me to Floyd were both executed at Tazewell C. H. and given to Mr. Floyd to have put upon record. After he reached his home in Logan he put the compromise on record, but withheld the power of att'y, and did not record it for nearly two years, and not until I had learned of his failure and called his attention to it. In Mr. Floyd's letter to me of the 15th of August, 1873, he reported the sale of three or four hundred dollars more lots since his last letter. Mr. Floyd gave me no information after the 15 of August, 1873, of his transactions. Two payments to Mr. Lawson having become due, and nothing except a small amount from James A. Sidebottom having been realized from the sale of lots, and being bound to Mr. Lawson, I made him two large payments in July, 1874, on account of his debt.

6th Q. State whether or not you have made any payments to defendant Lawson on the debt due to him from the plaintiff Floyd since the date of said compromise; and, if so, give as nearly as you can the date or dates of the payments and the sum or sums paid, and state whether said payments were made in whole or in
240 part by funds furnished you by the plaintiff Floyd, or with funds of your own derived from sources other than the Logan lands.

Answer. I paid Mr. Lawson $1,500 on the 10th day of July, 1874, and $2,684 on the 21st of July, 1874. These payments were made wholly from my own funds and not derived in any part either from Mr. Floyd or the Logan lands.

7th Q. State whether or not the plaintiff Floyd or any one for him has ever repaid to you in any way the money or any part thereof paid by you to said Lawson on said debt of Floyd, and, if any such payment has been made to you, how much has been paid, and when and by whom.

Answer. I have never received any part of the money paid by me from Mr. Floyd or any one else. The whole amount is still due me.

8th Q. State what taxes, if any, you have paid on the lands in question in this suit, and whether such payments, if any, have been made by yourself personally or by your agent, and, if by your agent, the name of such agent.

Answer. I have paid no taxes myself, but Mr. James M. Payne, my agent, reported to me that he had paid $272.35 taxes for the years 1873, 1874, 1875, and 1876.

241 9th Q. State what representations and statements, if any, were made by you and by the defendant, A. Lawson, in your presence, to the plaintiff in regard to the lands in question at and before the making of said contract of compromise of the date of August 3d, 1871, and filed with the plaintiff's bill as Exhibit "B," and whether you or said A. Lawson made any false or fraudulent representations to the plaintiffs on that occasion or any other in regard to the land in question in this suit.

Ans. I made no statements or representations to the plaintiff about the said land at the time of making the said contract or at any other time. Mess. Floyd and Lawson both knew all about the land; I knew nothing; I was in the relation of a buyer and not a seller. I was never at Logan Court-House but twice in my life—once when I was a boy and once in 1852—and I merely staid there all night when on my way to Warfield. I never at any time made any false or fraudulent representations to Mr. Floyd; I do not recollect hearing Mr. Lawson make any statement or representations to Mr. Floyd at — time about the land.

10th Q. What knowledge, if any, did you have, at and before the date of said contract of Aug. 3, '71, as to the quantity of the land to which said contract relates, and what was said by Lawson

242 and Floyd in the presence of each other as to quantity of said land, at and before the execution of said contract?

Answer. I had no knowledge at all of the quantity of said land; I knew nothing about it; I wrote the contract, Mess. Floyd and Lawson sitting at the table. When I came to that part of the contract where I had to describe the number of acres I asked the question, addressed to both of them, how many acres there were; Mr. Floyd said, "A thousand." Mr. Lawson said, "No; I won't be bound to any particular number of acres; there are several tracts and I don't know how they would run out." Then I used the language contained in the contract describing the land, which seemed to be satisfactory to them both.

And further this deponent saith not.

JOHN W. JOHNSTON.

Deposition of John L. Cole.

JOHN L. COLE, a witness, of lawful age, having been by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

1st question by Com'r FONTAINE: State, if you can, the character, quality, and value per acre of the uncleared mountain land involved in the suit of G. R. C. Floyd against Anthony Lawson and others, pending in the United States court at Charleston, and what

243 opportunity you have had of learning the same.

Answer. I surveyed the land referred to in the question some

time within a year. The uncleared portion is steep and rough, with but little marketable timber on it. I do not know what minerals it may contain, as they have never been developod, and I am not sufficiently acquainted with the geology of that region to know what is in the mountains; but, so far as the outside appearance of the land and timber goes, I think it worth from one to two dollars per acre; I would say one dollar and fifty cents per acre.

And further this deponent saith not.

JOHN L. COLE.

244 And at another day, to wit, at a district court of the United States for the district of West Virginia, at Charleston on the 19 day of May, 1880.

This day this cause came on to be heard and was argued by counsel, and upon consideration it is adjudged, ordered, and decreed that the injunction awarded by the judge of the State court, on the 6th day of of October, 1877, so far as it enjoins and restrains the defendants Lawson, Johnson, and Payne from prosecuting the suits in chancery mentioned in the bill against the defendants, James M. Jackson, Simpson Ellis, Thomas Avis, Hickman S. White, John Chafin, William Chafin, J. E. Rickets, and John B. Buskirk, now pending in the circuit court of Logan county, to enforce the contracts for the sales of the lands made by the plaintiff to them mentioned in the bill, and from collecting the purchase-money of said lands from said purchasers, and from making any further sales of the lands mentioned in the bill and Exhibits A & B, filed therewith, and from making any deed or deeds of conveyance for any of the said lands, and so far as it enjoins the purchasers of said lands from paying the purchase-money of the lands or any of them purchased by them as stated in the bill be, and the same is hereby, dissolved; and it appearing to the court that the defendant, James M. Jackson, is indebted for lots Nos. 9 & 12, in the town of Aracoma, Logan county,
245 sold to him by the plaintiff Floyd, ag't of the defendant, John W. Johnston, by a contract in writing, bearing date the 3d day of November, 1871, in the sum of $450, payable as follows: one hundred and fifty dollars, with interest thereon from the 3d day of November, 1871, on the 1st day of January, 1873; one hundred and fifty dollars, with interest from same date, on the 1st day of January, 1874, and one hundred and fifty dollars, with interest from same date, on the 1st day of January, 1875, and that the defendant, Henry Walker, is indebted for lot No. 6, in the town of Logan, sold to him by the plaintiff Floyd, agent of the defendant Johnson, in the sum of $300, payable as follows: One hundred dollars, with interest from the 23d day of September, 1873, on the 1st day of January, 1874, and two hundred dollars, with interest from some date, on the 1st day of January, 1875, and that the defendant, John Chafin, is indebted for two lots sold him by the plaintiff Floyd, agent for the defendant Johnson, and particularly described in the writing filed with the deposition of said Chafin as Exhibit "No. 8," in the sum of $350, payable as follows: one-half in one year, and the balance in

two years from the 15th day of December, 1874, the date of said contract, with interest from said last-named date: It is, therefore, adjudged, ordered, and decreed that the said defendants, and each of them, do pay the said sums of money and interest so due by them, respectively, as aforesaid, to the defendant, John W. Johnston, or to his agent, James M. Payne, within 30 days from the rising of this court, and, unless they shall do so, that Joseph
246 E. Chilton, who is hereby appointed a special commissioner for that purpose, do proceed to sell the said lots and each of them, if necessary, to pay to the said Johnston the monies paid by him for the plaintiff, Floyd, to wit, the sum of $4,184, with the interest due thereon, under the provisions of the contract, Exhibit "B," filed with the bill, and $108.31, paid by said Johnston for the taxes on the lands in question for the year 1878, at public auction, to the highest bidder, in front of the door of the court-house of Logan Co., after having advertised the time, terms, and place of sale by advertisement published in the Wayne Advocate, a newspaper of general circulation in Logan Co., printed at Cassville, in Wayne Co., once in each week for four successive weeks, and by posting a copy thereof on the front door of the court-house of Logan county at least 30 days prior to said sale, upon the follo-ing terms, to wit, one-fourth of the purchase-money cash in hand and one-half the residue in 8 months and the residue in 16 months, taking from the purchaser his notes, with good security, bearing interest from date, for the deferred instalments, the legal title to remain in the defendant Lawson till all the purchase-money is paid, and in case a sufficient sum to pay the said Johnson the money so due him as aforesaid shall not be realized from said sale, then it is further adjudged, ordered, and decreed that the said special commissioner shall proceed to sell, as hereinafter described, upon the same terms, time, place, and notice as
247 above specified, so much of the lands and lots mentioned in the bill, answers, and exhibits remaining unsold as may be necessary to pay the said sums due as aforesaid to said Johnston, but in making said sales he shall have regard to the streets and alleys in the said town laid off by the plaintiff, Floyd, so far as they have been opened, and so far as the said Floyd, before or during his said agency, or the said Payne have sold any of said lands or lots bounded by said streets and alleys or either, and that he report his proceedings under this decree to the next term of this court, but before receiving any money under this decree the said special commissioner shall give bond, with good security, to be approved by the clerk of this court, in the penalty of $5,000, conditioned according to law; and as to all other questions arising upon the papers, pleadings, and evidence in the case the court takes time to consider until the next term of this court.

And at another day, to wit, at a district court of the United States for the district aforesaid, held at Charleston on the 23rd day of November, 1881—

This cause came on to be heard & was argued by counsel, and the court being of the opinion that the plaintiff is entitled to an abate-

ment in the purchase-money set out in the contract of De-
248 cember 2, 1857, filed in this cause, by reason of the deficiency of 408 acres in the tract of 1,000 acres, but not being advised of the amount in money of such abatement, it is adjudged, ordered, and decreed that it be referred to Master Peter Fontaine to ascertain and report—

1st. What was the value of the said town lots Nos. 8, 9, 10, 11, 12, at the time of the contract aforesaid.

2nd. What was the value of the said 1,000 acres at same time.

3rd. What was the value at the same time of the bottom lands in the bottom and adjoining the town per acre; what was the value per acre of the bottom lands in the lower bottom at the same time; what was the value per acre of the cleared hill lands at the same time, and what was the value per acre of the wooded mountain lands at the same time.

4th. What is the amount of abatement in money to be allowed of purchase price by reason of said deficiency.

5th. To report any other matters deemed pertinent by said master or required by either or any party as to the subject of inquiry, and that he report his proceedings under this order to the next term of court; but before proceeding to act under this order he give such notice as is required by law or the rules of this court to the parties in interest.

249 And at another day, to wit, at a district court of the United States for the district aforesaid, held at Charleston on the 3rd day of May, 1882.

This day Peter Fountaine, a commissioner of this court, filed a report made by him in this cause, and it is ordered that the same be filed.

Which report is in the words and figures following, to wit:

250 In the District Court of the United States for the District of West Virginia at Charleston. In Chancery.

GEORGE R. C. FLOYD *vs.* ANTHONY LAWSON & *als.*

Office of Peter Fountain, Commissioner of U. S. Court for District of West Virginia,

CHARLESTON, WEST VIRGINIA, *April 24th*, 1882.

To the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia:

Your undersigned commissioner respectfully reports that on the 23rd day of November, 1881, a decree was made and entered by your said court in the cause entitled as above, by which it was provided and ordered as follows, to wit: * * * "And the court being of opinion that the plaintiff is entitled to an abatement in the purchase-money set out in the contract of December 2nd, 1857, filed in this cause, by reason of the deficiency of 408 acres in the tract of 1,000 acres, but not being advised of the amount in money of such

abatement, it is adjudged, ordered, and decreed that it be referred to Master Peter Fountain to ascertain and report—

"1st. What was the value of the said town lots Nos. 8, 9, 10, 11, and 12 at the time of the contract aforesaid.

"2nd. What was the value of said tract of 1,000 acres at same time.

251 "3rd. What was the value at the same time of the bottom land in the bottom adjoining the town per acre.

"What was the value per acre of the bottom lands in the lower bottom at the same time

"What was the value per acre of the cleared hill lands at the same time, and what was the value per acre of the wooded mountain lands at the same time.

"4th. What is the amount of abatement in money to be allowed of purchase price by reason of said deficiency.

"5th. To report any other matters deemed pertinent by said master, or required by either or any party, as to the subject of inquiry."

* * * * * * *

See decree of Nov. 23, 1881.

And the defendant, Anthony Lawson, requires a specific report upon the following matters, viz:

"1st. What was the value of the town lots 8, 9, 10, 11, and 12, with the buildings on lots Nos. 10, 11, and 12, in December, 1857, stating the value of each lot and of the buildings on each lot separately.

"2d. What was the value of the whole tract outside of said lots at the same time.

"3d. What was the value at the same time of the bottom land adjoining the town of Aracoma per acre, and the number of acres thereof.

"4th. What was the value per acre, at the same time, of the lower bottom land, and the number of acres thereof.

"5th. What was the value per acre of the cleared hill
252 land at the same time, and the number of acres thereof.

"6th. What was the value per acre of the wooded hill and mountain land at the same time.

"7th. What is the actual deficiency, if any, in the whole tract outside of said lots, taking it to have been sold as a tract of 1,000 acres; and in this connection the said defendant desires the evidence of William A. Dingess, Floyd's surveyor, to be reported, that he did not survey the whole of the tracts sold to Floyd by Lawson, and that it is impossible to *to* tell the actual deficiency without further surveying been done, and the offer of Lawson to Floyd thereon and his refusal thereof.

See pages 1 and 2 of Exhibit "J. H. F.," filed herewith.

In pursuance of the requirements of said decree of reference I gave notice to Messrs. Watts & Kennedy, the counsel of record for the complainant, George R. C. Floyd, and to James H. Ferguson, Esq., the counsel of record for the defendant, Anthony Lawson, that I would proceed to take evidence at Logan Court-House, in Logan

county, West Virginia, to enable me to answer the enquiries of said decree; and J. W. Kennedy, Esq., of the said law firm of Watts & Kennedy, and the said James H. Ferguson, Esq., being present, I began on the 5th day of April, 1882, at said Logan Court-House, to take the depositions of witnesses in this cause, and continued to take the same, at the said place, until the 8th day of April, 1882.

On said days I took at said Logan Court-House the depositions of Henry P. Clark, H. S. White, William A. Dingess, John De
253 Jarnette, Anthony Lawson, and James Nighbut, which depositions are filed herewith and made a part of this report, bound together and marked as exhibit "H. P. C." herewith.

See Exhibit "H. P. C."

In answer to 1st inquiry of said decree of reference, viz., "What was the value of said town lots Nos. 8, 9, 10, 11, 12, at the time of the contract aforesaid," and itemizing the values of said lots and of the buildings thereon in the manner required by the defendant, Lawson, viz., "stating the value of each lot and the buildings on Nos. 10, 11, and 12, separately," I would report as follows, viz: The witnesses who have testified in this cause as to the values of said lots and of the buildings thereon on December 2d, 1857, estimate their values as follows:

George R. C. Floyd, a witness in his own behalf, states that the dwelling-house and the buildings appurtenant thereto on said lots 11 and 12, and the said lots, were worth at said date $3,000.

See Ex. "G. R. C. F.," p. 13, ans. to 10th q'n, and page 14, ans. to 13th q'n.

And that the house down in the field was worth about $300 or $400.

See same Ex., p. 13, ans. to 10th q'n.

Henry P. Clark, a witness on behalf of the complainant, Floyd, states that said lots 8, 9, 10, 11, and 12, with all the buildings and improvements on them, were worth at said date $3,000.

See Exhibit "H. P. C.," p. 3, ans. to 5th and 6th q's and 1st q'n on cross-ex'n.

254 That the value of said lots 11 and 12, independent of the buildings and improvements on them, was $200, and that said lots 8, 9, and 10, all together, were worth $200.

See same ex., p. 10, ans. to 28th and 29th questions.

That the value of the dwelling-house was from $1,200 to $1,500.

See same ex., p. 13, ans. to 38th question.

That the servant's house was worth from $200 to $300, the well about $60, and that he estimated the value of the other buildings on said lots 11 and 12 in with his whole estimate, and could not fix any particular value to them.

See same ex., p. 14, ans. to 39th, 40th, & 41st questions.

That he valued the storehouse and all the rooms attached at about $500.

See same ex., p. 15, ans. to 44th ques.

And that he was inclined to think that he did not estimate the barn or stable.

See same ex., p. 16, ans. to 45th ques.

H. S. White, a witness on behalf of the complainant Floyd, states that about $3,000 was a fair value of the said lots 8, 9, 10, 11, and 12 and the buildings and improvements on them.

See Ex. "H. P. C.," pp. 19, 20, ans. to 4th and 5th questions.

That said lots 8, 9, 10, 11, and 12, without the buildings, were worth probably $1,200.

See same ex., p. 25, ans. to 16th ques.

That all of the buildings on all of said lots were worth about $1,800.

See same ex., p. 27, ans. to 20th ques.

And that the dwelling-house was worth about $1,000 and the store-house about $800.

255 See same ex., p. 29, ans. to 25th ques.

Anthony Lawson, a witness in his own behalf, states that he estimated the value of said lots 11 and 12 and the buildings thereon at $3,000, and the value of said lot 10 and the buildings thereon at about $1,200.

See Ex. "A. L.," pp. 7–8, ans. to 9th ques.

And that he valued said lots 8 and 9, on which there were no buildings, at about $200 each.

See same ex., p. 8, ans. to 9th ques.

☞ Read references to dep. of A. Lawson, on p. 9, post in this place.

John De Jarnett, a witness on behalf of the defendant, Anthony Lawson, states that he values the buildings on lot 10 at $1,000, and on lots 11 and 12 at $3,100, and on the bottom land at $400.

See Ex. "A. L," p. 12, ans. to 1st ques.

A part of the testimony of this witness is somewhat confused and entangled (see pages 54 to 64, inclusive of Exhibit "H. P. C."), but he shows that he was in a position to be well acquainted with the value of said buildings (see pages 49 to 53, inclusive, of same ex.), and, after clearing himself of his entanglement, finally states clearly that he put the house at $1,500, the negro house at $400, the kitchen at $150, the smoke-house at $100, the well-house at $50, the stable at $200, and lots 11 and 12 at $700.

See Ex. "H. P. C.," pp. 80–81, ans. to 1st ques.

And that in his former estimate as to lot 10 he included the lot with the buildings.

256 See same ex., p. 81, ans. to 2d ques.

Anthony Lawson, a witness in his own behalf, states further that he reaffirms his deposition of October 4, 1879 (found on pages 7 and 8 of Ex. "A. L."), as to the value of said lots 8, 9, 10, 11, and 12 and the buildings thereon.

See p. 72, Ex. "H. P. C.," ans. to 19th ques.

That he puts the dwelling-house at $1,500, the negro house at $300, the kitchen at $150, the well-house and well at $50, the smoke-

house at $100, and the stable at $200, making in all $2,300 for the buildings.

See same ex., pp. 74–75, ans. to 3d ques.

That in his former deposition he put lots 11 and 12 at $700, tho' he is not certain of it.

See same ex., p. 75, ans. to 4th ques.

And that he put the buildings on lot 10 all together at $900 and lot 10 at $300.

See same ex., p. 77, ans. to quest's 8 and 9.

James A. Nighbut, a witness on behalf of the defendant Lawson, puts the buildings on lot 10 all together at $800, and the buildings on lots 11 and 12 at $2,300, with $100 to be added for value of entry.

See Ex. " H. P. C.," pp. 83–84, ans. to 3d, 4th, and 5th questions.

After a careful consideration of all of the said evidence I report that, in my opinion, the weight of said evidence shows that the value of said lots 8, 9, 10, 11, and 12 and the buildings thereon in 1857 was as follows, to wit:

257	Value of lots 11 and 12 (land above)----------	$700	
	" " buildings, &c., on lots 11 and 12 ----	2,300	
			$3,000
	Value of lot 10 (land above) ----------	300	
	" " buildings, &c., on lot 10----------	800	
			1,100
	" " lots 8 and 9, each $200----------		400
	Total value of 8, 9, 10, 11, and 12 and buildings thereon--		$4,500

The copies of deeds filed as exhibits on behalf of the defendant Lawson also tend strongly to show that the above valuation of said lots, as to the land, is moderate and reasonable.

In answer to the 2d enquiry of said decree of reference, viz:

" What was the value of said tract of 1,000 acres at same time?"

And to the 2d requirement of the said defendant Lawson, viz:

" What was the value of the whole tract outside of said lots at the same time?"

I would report that the evidence which is now adduced in this cause does not enable me to answer these enquiries—

For, although at the time when said decree of reference was made it appeared from the bill and Exhibit C therewith and the deposition of the complainant (see p. 4, Ex. G. R. C. F.) that there was a deficiency of 408 acres in said whole tract, or, in other words, only 592 acres therein, it is now shown by the testimony of the surveyor who made the survey reported in said Exhibit " C," taken in connection with the testimony of the defendant Lawson, that
258 the amount of said deficiency, and, consequently, the number of acres in said whole tract have not been accurately ascertained, and cannot be known until an actual survey is made of a certain 700-acre tract, and said tract is partitioned into two equal parts.

See Ex. "H. P. C.," pp. 45 to 48, inclusive, and pp. 72–74, ans'rs to 21st and 22d questions.

And at this point, in accordance with the aforesaid 7th requirement of the defendant Lawson, I call attention to the offer made by said defendant to the compainant as to a survey of said 700-acre tract, which offer and the action taken thereon are recorded on page 48 of said Exhibit "H. P. C."

In answer to the 3d enquiry of said decree of reference, viz:

(*a.*) "What was the value at the same time of the bottom lands in the bottom adjoining the town, per acre;

(*b.*) "What was the value per acre of the bottom lands in the lower bottom at the same time;

(*c.*) "What was the value per acre of the cleared hill lands at the same time; and

(*d.*) "What was the value per acre of the wooded mountain lands at the same time."

And to the 3d, 4th, and 5th requirements aforesaid of the defendant Lawson, which add an enquiry as to the number of acres in the parcels designated above by the letters (*a*), (*b*), and (*c*) on the margin, and to the 6th requirement aforesaid of the said defend-
259 ant, which is the same as the above enquiry, designated by the letter (*d*) on the margin.

I would report as follows, viz:

The witnesses who have testified in this cause as to the value of said parcels of land in December 2d, 1857, and the number of acres there, estimate their values and the number of acres as follows, viz:

George R. C. Floyd, a witness in his own behalf, states that there were between 21 and 25 acres in the bottom adjoining the town, and that this land was worth about $100 per acre.

See ex. "G. R. C. F.," pp. 13, 14.

That there were about 11 to 14 acres of what was known as the second bottom, and this land was worth about $50 per acre.

See same ex., p. 14.

That the parcel first mentioned (21 to 25 acres) is more closely about 19 acres.

See same ex., p. 15.

That the mountain lands were cheap at $8 or $10 per acre.

See same ex., p. 16.

H. S. White, a witness on behalf of the complainant Floyd, states that the mountain lands were worth more than $10 per acre.

See ex. "G. R. C. F.," pp. 19, 20.

Anthony Lawson, a witness in his own behalf, states that there were from 20 to 25 acres of bottom land, 80 to 100 acres of
260 cleared hill land adjoining the bottom land, a field below town, including about 25 acres of bottom and hill; below that the tract sold to Isaac Morgan by Floyd, containing about 50 acres, about ⅔ of which was bottom land, and that he had no idea of the quantity of the wooded land.

That there were on the bottom land a double barn and double corn-cribs, worth about $300, the building that his father lived in

and the buildings appurtenant thereto, which were worth about $500.

That the bottom lands not laid off into lots were worth about $100 per acre.

That the bottom land below town was worth $30 per acre, and there were 15 acres of this land.

That the bottom part of the land sold by Floyd to Morgan was worth about $20 per acre, and that he could not estimate the value of the hill or back lands.

See ex. "A. L.," pp. 6, 7, 8.

And that if the back line of the tract had been so run as to include an additional quantity of 408 acres the land so added might have been worth fifty cents (50c.) an acre and not more than that.

See ex. "J. V. B.," p. 21.

John Dejarnette, a witness on behalf of the defendant Lawson, states that the buildings on the bottom land were worth $400.

See ex. "A. L.," p. 12.

261 John V. Buskirk, a witness on behalf of the defendant Lawson, states that if he owned the mountain land he would take $1 per acre and think it a big price; that $10 or $15 an acre would be a big price for all the hill land that was cleared in 1871 and for that cleared since 1871.

And that he would make no difference between the price of the land back of the back line (and the land running up to the back line).

See ex. "J. V. B.," pp. 6, 7.

John Chafin, a witness on behalf of the defendant Lawson, states that the land along and on both sides of the back line and close to it was not worth more than $1 per acre in 1871, and that if the back line had been run so as to add 408 acres to the tract that would have added $408 to the value of the tract.

See ex. "J. V. B.," pp. 13, 14.

James A. Nighbert, a witness on behalf of the defendant Lawson, states that if the back line were changed so as to add 408 acres to the tract he would not consider that it would add anything to the value of the tract; that he would not pay the taxes on it for it, but that for purposes of sale it might add fifty cents (50c.) an acre for the 408 acres and not over that.

262 From a consideration of all of said evidence I report as follows, viz:

The bottom lands in the bottom adjoining the town were worth, at the date of said contract, $100 per acre; but it is not clear from the testimony of said witnesses whether the value of the buildings on said land should be added to the value or said buildings were included to make up the value of $100 per acre.

The number of acres in this parcel is put variously at 19, 20, 21, and 25 (see dep's of G. R. C. Floyd and Anthony Lawson), and your commissioner thinks that this matter is not properly a subject for estimate or to be decided by the weight of testimony, as it can be accurately determined by a survey.

The bottom lands in the lower bottom were worth at said date $30 per acre.

The number of acres in this parcel is put at 11, 14, and 15 acres (see dep's of G. R. C. Floyd and Anthony Lawson), and I repeat here the remarks made as to ascertaining the number of acres in the parcel above.

As to the cleared hill lands, the only evidence that I can find as to their value — in the statement of the witness John V. Buskirk that he thinks "ten or fifteen dollars would be a big price for it." (See ex. "J. V. B.," p. 6, ans. to question 14.)

This evidence is so vague and uncertain that I cannot state what the value of said land was. The witness does not say that
263 $10 or $15 per acre was the value of the land, which would have been sufficiently uncertain, but that $10 or $15 per acre would have been a big price for it, thus leaving the true value uncertain.

The only estimate given in the testimony of the number of acres in said parcel is that it contained from 80 to 100 acres.

(See dep. of Anthony Lawson.)

I repeat here the remarks made above as to ascertaining the number of acres in this parcel.

As to the value of the wooded mountain lands at the same time, I think that the weight of the evidence shows that said lands were worth fifty cents (50c.) per acre.

It is impossible to state the number of acres of land of this class, because no witness has testified on this subject and there is no evidence in this cause as to this matter, and for the reason stated at page 11, *ante*.

In answer to the 4th enquiry of said decree of reference, viz., "What is the amount of abatement in money to be allowed of purchase price by reason of said deficiency?" I would report that it is impossible for me to answer this enquiry, for the reasons stated hereinbefore.

264 In answer to the 5th clause of said decree of reference, viz., "To report any other matters deemed pertinent by said master or required by either or any party as to the subject of enquiry," I would state that I have reported hereinbefore the matters specially required by the defendant Anthony Lawson, and that I have not been required by the complainant or any other person to report specially any matters.

I would suggest that it seems evident that additional surveying will be required in this case in order to ascertain with any degree of accuracy the true amount of deficiency in the land in question, and that if it is desired that the values of the several parcels of "bottom land adjoining the town," "bottom land in the lower bottom," "cleared hill land," and "wooded mountain land" should be known with accuracy these parcels ought to be run out separately; also, further evidence should be taken as to the value of the "cleared hill land."

This report is completed and very respectfully submitted this 4th day of May, 1882.

PETER FONTAINE,
Com'r of U. S. C. for D. of W. Va.

Costs of report, $135.

The complainant, by counsel, entered exceptions on said report in the following words and figures:

265 The complainant, by his counsel, excepts to all and every part of the report of Commissioner Fontaine, except so much thereof as ascertains the value of the town lots, with the improvements thereon, at the sum of $4,500, as to which he makes no exception, because the same is within the matter referred to said commissioner. He excepts to all the residue of said report and suggestions made by the commissioner for the following causes:

1st. Because it is not necessary to ascertain the value of the upper & lower bottoms of the supposed 1,000 acres, as the principles of equity require the price paid or fixed upon as the true value of the land, and that the average value is to be apportioned over the whole of the tract, when sold as a whole, without any difference in the value of parcels.

2d. Because the suggestion of a survey to be made to ascertain the deficiency is not necessary, as that deficiency is ascertained by the decree at 408 acres, and is *res adjudicata* in this case.

3d. Because, having ascertained the value of the lots at $4,500, it leaves the value of the supposed 1,000-acre tract at $5.50 per acre, which, with 408 acres as the ascertained deficiency, makes the amount for which decree should be made $2,244.00, with interest from January 8, 1858.

May 8, 1882.

SAM'L A. MILLER AND
WATTS & KENNEDY,
Counsel for Complainant.

266 And at another day, to wit, at a district — of the United States for the district of West Virginia, holden at Charleston as aforesaid on the 20th day of May, 1882.

The defendant, Anthony Lawson, by James H. Ferguson, his counsel and attorney, this day filed his petition praying, among other things, for a rehearing of an interlocutory decree made in this cause at the last term of this court and for leave to file a bill in the nature of a bill of review for that purpose; also for a survey to be made under the order of this court of the 700 acres tract of land mentioned in the petition to ascertain the true deficiency in the quantity of land sold by defendant Lawson to complainant, in accordance with the contracts A & B filed with the bill, and for a partition thereof between the plaintiff and one Astinax McDonald, the owner of an undivided interest thereof, and that said plaintiff be compelled to amend his bill for the purpose by making said Astinax McDonald a party defendant therein. The plaintiff thereupon, by Miller & Watts, his counsel and attorneys, moved the court to strike out said

petition, and the court, without deciding or passing upon any other of the matters arising upon said petition and motion, adjudges,
267 orders, and decrees that the plaintiff do amend his bill by making the said Astinax McDonald a party defendant therein, which is accordingly done, and the said McDonald, by James H. Ferguson, his counsel and attorney, waived process as to himself and filed his answer to the plaintiff's bill, and therein agrees to the partition of said 700 acres of land between the plaintiff and himself, as prayed for in said petition, and his cause is set for hearing as to him; and it is further adjudged, ordered, and decreed that John L. Cole, of Kanawha county, do, according to the prayer of said petition and on said Lawson's motion, go upon the lands in controversy, and especially upon the said 700 acres, and survey and lay off the same and make partition thereof, assigning to the said McDonald all the land embraced in his deed from Lawson to him, running the dividing line, if any is called for in the deed, according to the call and terms of said deed, and that he do such other surveying of the other lands in controversy in this suit as either party may require, and report his proceedings to the next term of this court; and it appearing to the court that a considerable portion of the lands in controversy in this suit have been sold and purchased by the plaintiff, and that
268 one of his notes of $1,400 therefor will become due on the 15th day of July, 1885: It is, by consent of all the parties, further adjudged, ordered, and decreed that the defendant Lawson do refund and repay to the defendant, John W. Johnston, out of the moneys heretofore paid him by said Johnston under the contract of August 3rd, 1871, on or before the day the said note will become due and payable, the amount of principal and interest due thereon, but such payment is not in any way to affect the rights of the said Lawson under the said contract or under the original contract of December 2d, 1857, or under the contract of August 3rd, 1871, *on or before the day the said note will become due and payable the amount of principal and interest due thereon, but such payment is not in any way to affect the rights of the said Lawson under the said contract or under the original contract of December 2nd, 1857, or under the contract of August 3rd,* 1871, for the satisfaction and payment of any sum of money which may be found due him from the plaintiff, George R. C. Floyd, for the lands in controversy in this suit by an enforcement of his lien thereon or by action or suit against said plaintiff or said Johnston personally, and when such payment is made the same is to be stricken from the amount claimed by said Johnston against the plaintiff.

And it is further adjudged, ordered, and decreed that all proceedings to collect the said note of the plaintiff of $1,400, payable on the said 15th day of August, 1882, be stayed until the further order of this court, and on motion of the defendant Lawson he has
269 leave to file a cross-bill in this cause in the office of the clerk of this court within 60 days from this date, and when said bill is filed said clerk is directed to issue the proper process thereon, and this cause is continued.

The answer of Astinax McDonald, referred to in the foregoing decree and filed, is in the following words, to wit:

The Separate Answer of Astinax McDonald to a Bill in Chancery Filed in the District Court of the United States for the District of West Virginia by George R. C. Floyd against him and others.

This defendant, for answer to said bill, says that he is the owner in fee of the undivided one-half of the 700 acres of land, the residue of which was sold by the defendant Lawson to the plaintiff Floyd, and he admits the right of the plaintiff to a portion thereof between the plaintiff and himself, and he prays that such partition be made.

ASTINAX McDONALD,
By Counsel.
J. H. FURGUSON, *Sol.*

The petition of A. Lawson, referred to in the foregoing decree, is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia. In Chancery.

GEORGE R. C. FLOYD *vs.* ANTHONY LAWSON *et al.*

To the Honorable John J. Jackson, judge of said court:

Your petitioner, Anthony Lawson, respectfully represents that this cause was heard at the last term of your honor's court, sitting at Charleston, and an interlocutory decree was entered therein, which decree is here referred to and prayed to be taken, read, and considered as part of this petition.

By reference to said decree it will be seen that it states by way of recital that there is a deficiency of 408 acres in the tract of land agreed to be conveyed by your petitioner to the plaintiff by the contract of December, 1857, copies of which are filed with the plaintiff's bill and the answer of your petitioner in this cause, and said copy so filed with your petitioner's said answer is here referred to and prayed to be taken, read, and considered as a part of this
271 petition. Said decree was based upon an *ex parte* survey made by the plaintiff and filed with his bill in this cause, and its correctness was not admitted by your petitioner in his answer, and proof of its correctness was required by your petitioner in his said answer, but no such proof was furnished or attempted to be furnished by the plaintiff. A copy of said survey is filed with the plaintiff's bill, and the same is here referred to and prayed to be taken and read as part of this petition, and that part of your petitioner's answer to said bill calling for proof of the correctness of said survey is also here referred to and prayed to be taken, read, and considered as a part of this petition. The said plaintiff, both in his bill and in conversations in regard to it, claimed and asserted the correctness of this survey, and, inasmuch as he made no proof on the subject, your petitioner was driven to the alternative of allowing the cause to be heard upon this survey without other proof than the declarations of the plaintiff and the allegations of his bill upon the

subject or take the risk of a resurvey at his own costs if it turned out that the same was correct, and therefore, relying upon the truth of the allegations and representations of the plaintiff made as aforesaid, and believing at the time and under the circumstances
272 that the same was true, he did not require said resurvey to be made, and the said hearing was had with this understanding and belief on his part, and your petitioner never knew or suspected anything to the contrary until the fact was disclosed on the taking of the account directed by your honor's decree in this cause a short time before the present term of your honor's court.

By reference to said contract of Dec'r, 1857, it will be seen that the land which your petitioner was to convey under the terms thereof is described as follows: "The property of said Lawson, at Logan Court-House, consisting of five half-acre lots, viz., No-. 8, 9, 10, 11, & 12 in the original plan of the town of Lawsonville, now Aracoma, and about one thousand acres of land lying on the east side of Guyandotte and north of Aracoma, being all the land owned by the said Lawson below or north of Kiesee's branch, lying back of lots No-. 6 & 7, and below the public square, down as far as the McDonald land."

And as to the warranty the contract says: "The said Lawson is to make to the said Floyd a deed, with general warranty and relinquishment of dower, to the above-described property, except one recent grant and part of another tract lying back from the river, which he is only to convey with special warranty."

273 That the part of survey mentioned in said contract was a survey of 700 acres, more or less, made on the 5th day of March, 1855 (see deposition of William A. Dingess, surveyor, taken by P. Fontaine, commissioner, pages 46 to 48, which is here referred to & prayed to be taken & read as part of this petition), in the name of your petitioner, by his brother, James Lawson, and of which your petitioner owned an undivided moiety at the date of said contract, his brother, the said James Lawson, owning the other undivided moiety thereof; that after said contract was so made as aforesaid, his said brother sold his said undivided moiety of said tract of land to one Astinax McDonald, and directed your petitioner to convey the same to him, which he did by deed, bearing date the — day of ——, 18—, after the execution of the said contract of December, 1857, but the exact date cannot be here given in the absence of the deed. The McDonald line called for in said contract is the dividing line running back from the Guyandotte river, between the lands of your petitioner mentioned in said contract and some old men named McDonald, who owned said adjoining land for 2 years previous to Dec'r, 1857, and has no reference to or connexion with said survey of 700 acres,
274 which lies away off on the mountain on further side or end of the lands mentioned in said contract from the river, and no person of the name of McDonald had any interest in or connexion with said 700 acres at the date of said contract; that the said survey, made by said Dingess for the plaintiff Floyd, a copy of which is filed with the plaintiff's bill as Exhibit "C," was made without any notice to and in the absence of this defendant, as ap-

pears by the deposition of said Dingess already referred to, and by that of your petitioner, taken before said Fountain, commissioner, on pages 73, 74, which said pages of his deposition he prays may be taken, read, and considered as part of this petition; that, as appears by the said deposition of the said William A. Dingess, the said survey made by him for the plaintiff did not and does not include the one-half of the said 700 acres to which this petitioner was entitled at the date of the contract of December, 1857, and that no partition thereof can be legally and properly made without an actual survey of the whole of the exterior lines of said survey, and no partition thereof can be properly and legally made between
275 the said plaintiff and Astinax McDonald, who now holds your petitioner's deed for the one undivided moiety thereof, until the said McDonald is made a party to this suit. As before stated, your petitioner had no knowledge or information that said survey of 700 — had not been run by said Dingess, or that the one-half thereof had not been run off to the plaintiff by said Dingess at the time said decree was made, and as soon as he ascertained these facts he offered to the plaintiff Floyd and his counsel, in the presence of said commissioner, in order to expedite the final hearing of this suit, to let Mr. Dingess, his own chosen surveyor, go at once and run off the said survey of 700 acres and make a partition thereof between the said Astinax McDonald and the plaintiff, and he also procured the attendance of the said McDonald before the said commission-, who then and there agreed that such survey and partition might be made as proposed by your petitioner, and that he would abide by it, which proposition and offer the plaintiff and his counsel refused to acceed to.

Your petitioner therefore prays that he may be permitted to file in this cause a bill in the nature of a bill of review to have the
276 said interlocutory decree reviewed and set aside and the cause be heard; that the plaintiff be compelled to amend his bill and make the said Astinax McDonald a party defendant therein, and that a survey and partition of the said 700-acres survey be made between the said McDonald and the plaintiff, assigning to each an equal moiety thereof, according to quantity, quality, and value. He also prays that he may be allowed to file a cross-bill in this cause in order to reform and correct the said contract of December, 1857, as well as the subsequent contract between your petitioner, the plaintiff, and the defendant, John W. Johnston, so as to make the same conform to the contract and agreement on each occasion as it was made, agreed upon, and understood between all the parties thereto before and at the time said contracts and each of them were written by the said Johnston and executed by the parties, as stated in the answer of your petitioner to the plaintiff's bill and in his depositions taken in this cause before the hearing thereof at the last term of this court; all of which are here referred to and prayed to be taken, read, and considered as parts of this petition. Your petitioner also prays that a rehearing of said interlocutory decree be granted him, for the reason stated in this petition and in the papers herein
277 referred to, and for such other, further, and general relief as

he may be entitled to in equity; and as in duty bound he will ever pray, &c.

ANTHONY LAWSON,
Defendant & Petitioner.
JAMES H. FERGUSON, *Sol.*

DISTRICT OF WEST VIRGINIA, *Kanawha County,* } *To wit:*

James H. Ferguson, being first duly sworn, deposes and says that he is the attorney and counsel of the above-named defendant and petitioner, Anthony Lawson, in this cause, and that said Lawson is not a resident or citizen of the State of West Virginia, but is a resident and citizen of the State of Virginia, & has not attended the present session of this court; that he was present at the whole of the proceedings in this cause before the commissioner, Fontaine, named in the foregoing petition, and has a personal knowledge that all the facts stated in the foregoing petition as to what took place before said commissioner are true. Affiant further says that he saw and inspected the record of the survey of 700 acres mentioned in said petition in the surveyor's book of Logan county, spoken of by William A. Dingess in his deposition before said commissioner, and that it was — his request and suggestion that said Dingess made the examination and teste from his field-notes of the survey, made
278 by him for Floyd, the plaintiff, which disclosed the fact that less than half of said survey, according to the plat thereof recorded in said book, had been run off by him to the plaintiff, and it was questions put by him to said Dingess shortly before he was sworn and examined as a witness, as aforesaid, that disclosed the fact that said Dingess had not run the lines of said 700-acres survey except to a limited extent, and that, according to the plat of said survey, the one-half thereof had not been run off to the plaintiff.

Affiant further says that he saw and examined the deed-book of Logan county, wherein the deed of said Lawson to Astinax McDonald is recorded, and the record of said deed therein, and that his recollection is that he directed a copy of said deed to be made and filed with the depositions taken by said Commissioner, but upon examination he finds no such copy. His recollection, however, is that said deed bears date long after the date of the contract between Floyd & Lawson of December, 1857. Affiant further says that he resided in Logan county for several years, commencing with the year 1845, and was and is well acquainted with the McDonald lands mentioned in said contract, and that he was one of the counsel in a suit for the partition of said lands between the several owners thereof, which suit was determined prior to 1853, and that the
279 statements of said petition in relation to the said McDonald lands and the line thereof between said lands and those of said Lawson are true.

And affiant further says that he has had charge of all the litigation between the said Floyd and Lawson for said Lawson, with the exception of a short interval from the commencement of the first

suit brought by Lawson against Floyd in Logan county, shortly after the close of the late war until this time, and he knows personally about all the facts and circumstances attending said litigation, so far as Floyd & Lawson — concerned, and he knows particularly that all the material facts and allegations of the foregoing petition are true.

JAMES H. FERGUSON.

Taken, sworn to, and subscribed, in open court, this 18th day of May, 1882.

Teste: JASPER Y. MOORE, *Clerk.*

And at another day, to wit, on the 14th of July, 1882, came Anthony Lawson, by Mess. Ferguson and Camden, his counsel, and filed in the clerk's office of the district court of the United States for the district of West Virginia, at Charleston, his cross-bill
280 against George R. C. Floyd, which cross-bill is in the words and figures following, to wit:

The cross-bill of Anthony Lawson, a resident and citizen of the State of Virginia, filed in the district court of the United States for the district of West Virginia, in a suit in chancery therein pending, wherein George R. C. Floyd, a resident and citizen of the State of West Virginia, is plaintiff and the said Anthony Lawson, John W. Johnston, and others are defendants.

To the Hon. J. J. Jackson, judge of said court:

Your orator, Anthony Lawson, respectfully represents that on the 2d day of December, 1857, he entered into a written contract with George R. C. Floyd, the plaintiff in the original bill filed in this case, a copy of which agreement is filed with said plaintiff's bill, and the same is here referred to as a part of this bill. Your orator also refers to his answer to the said bill of said plaintiff Floyd and the exhibits therewith filed, and prays that the said answer and each of the said exhibits be taken and read as parts of this bill; that at the date of said contract the tract of land mentioned therein as the Waterford place was the property of John B. Floyd, the brother of the plaintiff, George R. C. Floyd, and the legal
281 title thereto was in him, and the contract, so far as the said Waterford place was concerned, was made with the said George R. C. Floyd as the agent of his said brother, although that fact is not stated in said contract; but, as stated in the said answer of your orator, the terms of the said contract between him and the said George R. C. Floyd were agreed upon several months previous to the execution thereof, and in the meantime your orator went to Washington city to see the said John B. Floyd, who was then Secretary of War, in relation the right of the said George R. C. Floyd to make the same, and, as stated in said answer of your orator, the said John B. expressed himself as satisfied with the terms of said contract, declared his willingness to take the lands of your orator at Logan Court-House at $10,000 in part payment of said Waterford place at the price of $16,000, inasmuch as he had been and was will-

ing to sell said place to your orator for $10,000 in cash, and he then and there told and authorized your orator to go on and close the contract with the said George R. C. Floyd and that he, the said John B. Floyd, would convey the Waterford place to your orator, which he afterwards did; that the Smith place mentioned in said contract had previously been purchased by the said George
282 R. C. Floyd at a judicial sale, and that he had not complied with the terms of said sale by paying the purchase-money, or any part thereof, which he had agreed to pay, and that all the right, title, and interest the said Floyd had in said lands was the right to acquire the title and ownership thereof by paying the purchase-money therefor, which he was wholly unable to do, and but for the said contract, by the terms of which your orator assumed the payment thereof, as stated in his said answer, the same would again have been sold for the said purchase-money due thereon from the said Floyd.

And your orator avers, charges, and says that in the said contract and the carrying out of the same the said George R. C. Floyd, in fact and in truth, had no valuable interest in either tract of land and parted with nothing of value to him, but had only the naked right to pay for and take the Smith land, which he was utterly unable to do; and that he was no party to the deed for the Waterford place, which he did not own and had no interest in, nor to the deed to the Smith place, and if there had been a deficiency in the quantity of land contained in either of said places he would not have been in any way responsible for such deficiency; that by reference to said contract it will be seen that its language as to the
283 quantity of land in the Waterford place is "supposed to contain eight hundred and two acres," and as to the Smith place "supposed to contain four hundred and sixty-seven acres," and as to the lands of your orator outside of lots 8, 9, 10, 11, 12, "about one thousand acres of land lying on the east side of Guyandotte and north of Aracoma, being all the land owned by said Lawson below or north of Kezer's branch, lying back of lots No. 6 and No. 7, and below the public square down as far as the McDonald land." The peculiarity of this description is accounted for as follows: The said contract was drawn by the defendant, John W. Johnston, the brother-in-law of the plaintiff, George R. C. Floyd, and when he came to that part of the contract he enquired what quantity he should insert in the contract; and your orator told him that he did not know the quantity of the land; that it was made up of several surveys and parts of surveys, and he would not be bound for any particular quantity of acres; that the supposition had been that there was about 1,000 acres in all, but how that was he did not know, and that he would only sell and bind himself to convey all the land he owned at Logan Court-House outside of the lots named, and that he would only bind himself to convey a part of the lands with special warranty; all of which was in the presence and hearing of
284 the said George R. C. Floyd and was assented to by him; and thereupon the said Johnston wrote the contract in the language therein stated, and which he said would not bind your orator

to convey any other or greater quantity of land than was owned by him at Logan Court-House, within the territory mentioned in the contract, and the said Johnston, being a lawyer and supposed to understand the legal effect of the language used by him, and your orator, believing the effect of the language so used to be just what the said Johnston stated it was, and believing and understanding that he was not bound by said contract to convey any specific number of acres under said contract, but only so much land as he owned at the place and within the territory named, whether it was more or less than one thousand acres, he signed the said contract, but he would not have done so had he known or been told that said contract could possibly be construed to require him to convey or account for any specific number of acres, either more or less, than one thousand; and the fact and truth is that both the said Johnston and the said George R. C. Floyd understood the said contract as drawn precisely as it was understood by your orator. Your orator
285 further avers & says that he had no knowlege as to quantity of land in either tract sold to him by the said contract of 1857, & to this day he does not know the quantity of land in either of them, having made no survey thereof, for the reason that no survey of any of the lands mentioned in said contract was contemplated by the contract, & therefore none was ever made, until the said Floyd for another purpose made the survey mentioned in his bill; that prior to the time of the making of said contract the said John B. Floyd had offered the said Waterford place to your orator for $10,000 in cash, and your orator had declined at the time to take it until he could make some disposition of his lands and lots at Logan Court-House, and the said George R. C. Floyd having heard of this made the proposition to your orator which resulted in the said contract of December 2nd, 1857. Your orator did not, at the date of said contract or before its date, value his said Logan property at $10,000, and he would have sold it for cash for greatly less than that sum; but inasmuch as the said Floyd proposed to sell the said Waterford place for $16,000, being $6,000 more than the owner thereof asked for it in cash, and to sell the Smith property at $10,000, making in all $26,000, and to take in part payment therefor your orator's said Logan property at $10,000, and in view and in consideration of the further
286 proposition of the said Floyd, that as the payments which your orator should have to make for said Floyd, under and by virtue of said contract, to wit, $9,850 to A. S. Gray, $8,410 and perhaps more to Ballard P. Smith, and the Logan property at $10,000, amounted to more than $26,000, the purchase price of said two tracts of land so sold him by Floyd, he, the said Floyd, would pay to your orator the difference, whatever it might be, between $6,000 and the sum your orator would have to pay the said B. P. Smith for the Smith lands, and that for the said difference so paid by your orator he should retain the vendor's lien on said Logan property. Your orator accepted his said proposition, and said contract was made and entered into accordingly, as will appear by refence thereto. The only parts and portions of your orator's Logan property at the time of said contract of any special value were the

five lots and the bottom lands adjoining and below the town, that portion of the hill lands cleared and joining the bottom lands, and the coal bank opened thereon near the base of the hill. Back of these cleared lands the hill lands were steep, rocky, rugged, and barren, unfit for cultivation or any purpose of husbandry, and of very little value for any purpose whatever. They were made
287 up of different surveys, one of which, of 700 acres, more or less, your orator owned in connexion with his brother James, each being entitled to a moiety thereof, and your orator had no sort of knowledge as to the number of acres contained in the boundary he sold to Floyd, and he, at the time of the sale, and has ever since, regarded the quantity of acres in the boundary as of no consequence whatever, for the reasons and in view of the facts aforesaid, and if he had known at the date of said contract that said Logan property did not contain more than 500 acres in all, he would not have entered into said contract with said Floyd at the price agreed to be paid for said two farms, unless the said Floyd would have taken the said Logan property at the said sum of $10,000; and in support of the statements hereinbefore made that the said George R. C. Floyd did not own the said Waterford place and really did not part with or pay anything of value, so far as he was concerned, for the said Logan property—

Your orator further says that neither the said George R. C. Floyd or his brother, the said John B. Floyd, having paid any part of the money agreed to be paid to him by the said contract for the said Logan property, although the same had long been due and payable, as stated in your orator's said answer to the bill of the said George R. C. Floyd herein—

288 Your orator, in the year 1862, applied to the said Jno. B. Floyd for the payment of said purchase-money, and said Floyd replied that the contract being in the name of his brother George, and in view of the uncertainty of life by reason of the war then going on, he did not like to make any payment without some paper to show that said Logan land belonged to him, and he requested your orator to communicate with his brother George, who then resided in the mountains near the North Carolina line, and get such paper for him, and your orator, in compliance with his said request, sent his son, R. M. Lawson, to the residence of said George R. C. Floyd, who procured from him the written agreement desired by the said John B. Floyd, bearing date the 8th day of July, 1862, and the same is herewith filed as part of this cross-bill, marked "G. R. C. F." Your orator forwarded this paper to Gen'l John B. Floyd, and some time afterwards (the exact date he cannot give) he received a letter from said John B. Floyd endorsing said last-named paper, and stating, in substance, that it was not convenient for him to pay the sum due on said Logan property, and that your orator might take possession of said lands and hold them for the purchase-money due him, with interest, and in case he failed to pay said purchase-money and interest your orator should have the property and
289 hold it for the sum so due him. Your orator accepted this proposition, and made arrangements to take and hold said

property in accordance therewith, but before the war closed the said John B. Floyd died, and your orator lost his said letter containing the said proposition. In this condition of things, a short time after the close of the late war he applied to James H. Ferguson for his counsel and advice in the matter, stating to him all the facts and exhibiting to him the said paper marked "G. R. C. F.," and was advised by his said counsel that inasmuch as General John B. Floyd was dead and his said letter lost, and as he (your orator) was not competent to testify in the case, the best thing to do was to bring suit upon the original contract, and in case George R. C. Floyd could pay for the land let him do so and take it, or, if he could not, for your orator to buy it at the amount of debt, interest, and costs, and make his title to it good in that way; and, in pursuance of this advice, he did institute a suit in chancery in the Logan circuit court on said contract, and the same was compromised, as is shown by the contract, dated the 3d day of August, 1871, a copy of which is filed with the said answer of your orator to the bill of the said George R. C. Floyd herein, marked "Exhibit No. 2." This contract, your orator is advised and believes, and so charges, put an end to
290 and vacated the said former contract, and that all of the rights of the parties in this suit must be determined by the said last-named contract; but whether this be so or not, the attention of the court is called to that part thereof which reads as follows:

"And it is further agreed that the said Lawson and the said Floyd shall each, and they do hereby, bind themselves that the property and control of the tract of land herein mentioned sold by the said Lawson to the said Floyd, estimated to contain 1,000 acres, shall be in the said Johnston as an indemnity to him, which is described as follows, viz: All the land owned by the said Lawson lying below the Kezer branch, above Aracoma, lying back of the lots Nos. 5, 6, and 7, in the original plan of the town of Lawsonville, now Aracoma, including the following town lots, as laid down in the said plan of the town of Lawsonville, viz., 8, 9, 10, 11, and 12; thence down the river to box-alders, at the lower end of said Lawson's land; thence with the division line between said Lawson's land and McDonald's land; thence up the point of the ridge below the sugar camp hollow to the back line of said Lawson's land; thence with the back line of said Kezer's branch, and thence down the same to the beginning; but the said Lawson is to retain the legal title to the said land and lots as a security for the payment of said pur-
291 chase-money, except the land and lots sold to Isaac Morgan and John Urias Buskirk."

This contract was also written by the said John W. Johnston, and while writing the same he asked what number of acres there were in the tract, and the said George R. C. Floyd answered, "about a thousand," but your orator replied that he would not guarantee any particular number of acres, that the tract was made up of several tracts and parts of tracts, and that he did not know how much land was in it; to which said Johnston replied he would state the land as estimated to contain 1,000 acres, and then describe it as all the land owned by your orator, and gave the boundary as stated

above, and that such statement and description would not render him (your orator) responsible for any particular number of acres of land, but would only require him to convey all he owned at that place regardless of quantity, and it was with this assurance and this understanding & no other that your orator agreed to and signed said contract, and he would not have entered into or signed the same with any other understanding of its tenor as to the quantity of said lands. These facts are proved in this cause by the depositions of the said John W. Johnston and your orator filed herein, and he here refers to said depositions, so far as they relate to this matter, and asks that they be read as part of this bill; that the cause was heard at the fall term of your honor's court, 1881, at Charleston, and a decree was rendered herein, among other things, as follows: "And the court
292 being of opinion that the plaintiff is entitled to an abatement in the purchase-money set out in the contract of December 2, 1857, filed in this cause, by reason of the deficiency of 408 acres in the tract of 1,000 acres," &c. Your orator was very much surprised at this decision, as he had always been advised by his attorney and counsel in the case that said contract and sale of Logan lands was one of hazard and not a sale by the acre, and he is still so advised by his said counsel and believes the same to be true. Your orator has learned since the said decree was rendered that the said Floyd did not, in making the survey filed by him with his bill in this cause, survey the whole of said tract of 700 acres so owned as aforesaid in connexion with his brother, and that the part thereof which said Floyd caused to be surveyed and laid off to himself was greatly less than than the one-half thereof in quantity, quality, or value, and that said Floyd studiously concealed this fact from your orator up to the time of said hearing, and your orator never found it out until at the taking of the depositions in this cause before Commissioner Fontaine, a short time before the last spring term of your honor's court; and your orator avers and charges that the conduct of said Floyd in making his said survey as aforesaid and then concealing the same from your orator until after said hearing, as he did, was a gross fraud on your orator in the conduct of this case;
293 and your orator further says that the said John B. Floyd died in the year 1863 or 1864, leaving a last will and testament, which was duly admitted to record in Washington county, Virginia, and in and by which he conveyed the whole of his estate, real and personal, to his wife, who was then in life, and that his said wife has since died, but whether testate or intestate he does not know, nor does he know who her heirs-at-law or devisees, as the case may be, are. To the end, therefore, that justice may be done in the premises, your orator prays that the said contract of December 2d, 1857, if, in the opinion of the court, the same is still in force and not abrogated by the contract of August 5, 1871, may be reformed and corrected so as to conform to the real understanding and intent of the parties thereto, as hereinbefore stated—that is to say, so that the sale of the said Logan property of your orator shall be therein stated to be a sale by the tract, regardless of quantity, and not a sale by the acre, and that the said contract of August 3rd, 1871, be also reformed and

corrected in the same manner, so as to express the real agreement and intent of the parties to the same, as hereinbefore stated; and he also prays that the said George R. C. Floyd and John W. Johnston be made parties defendant to this bill, and that said defendant Johnston (but not the said Floyd) do answer the same and each allegation thereof so far as they in any way relate to him; but
294 your orator does not call for any answer or discovery from the defendant George R. C. Floyd as to any of the allegations of this bill, as he will and does rely upon other witnesses and other evidence to prove the same.

Your orator further prays that this bill may be taken and considered as a bill in the nature of a bill of review for the purpose of correcting, reviewing, and reversing the said decree rendered herein as aforesaid at the said fall term of your honor's court, 1881, in case your honor should decline to reform and correct said contracts and each or either of them as hereinbefore prayed for; and to this your orator assigns the following errors in said decree, to wit:

1st. It was error to hold and decide that the plaintiff, George R. C. Floyd, was entitled to an abatement in the purchase-money of the land mentioned in the contract of December 2nd, 1857, by reason of the alleged deficiency in the quantity thereof; and

2nd. It was error to decide that there was a deficiency in the quantity of said land of 408 acres.

Both of these errors are apparent on the face of the record herein, and are further shown by the newly discovered evidence hereinbefore stated.

Your orator therefore further prays that a rehearing of the case and of the said decree may be granted him, and that said decree
295 may be vacated, set aside, and annulled.

And finally your orator prays that his vendor's lien on the real estate mentioned and described in the said contract of August 3d, 1871, may be enforced by a proper decree, and that the proceeds of said real estate sold under the decree heretofore made in this cause, or so much thereof as may be necessary to pay the balance of purchase-money and interest due him for said real estate, which amounts to several thousand dollars, be paid to him, and that he may have such other, further, and general relief herein as the nature of his cause requires, and to which in equity he may be entitled, and for process of subpœna, &c.

ANTHONY LAWSON.

FERGUSON & CAMDEN,
Sol's.

And at another day, to wit, at a district court of the United States for the district of West Virginia, holden at Charleston, on 18th day of November, 1882.

This day the plaintiff moved the court to strike out the cross-bill heretofore filed in this cause by the defendant, Anthony Lawson,

to which the said Lawson objected, and the court takes time to consider of said motion, with leave to the parties to file briefs in vacation by the 4th day of January next of the said court, to be holden at Charleston, to be acted upon by this court then.

296 And Surveyor John L. Cole, who was appointed by a former decree in this cause to survey the tract of 700 acres of land mentioned in said decree, and to make partition thereof between the plaintiff, George R. C. Floyd, and the defendant, Astinax McDonald, and to do such other surveying in relation to the lands in controversy in this suit as either party might require, having performed the duties required by said decree and filed his report and plat thereof, to which report there are no exceptions, and the said surveyor having, at the instance of the plaintiff, made a line of partition of the said tract of land according to the survey heretofore made by Surveyor Dingess, a plat of which is filed with the plaintiff's bill, and at the instance of the defendant Lawson made another line of partition, whereby he agrees to assign to the said plaintiff the one equal moiety of said 700-acres survey, but which is found by said survey to contain 666 acres, which moiety contains 333 acres, and to the said Astinax McDonald 333 acres, the other moiety thereof—

It is, upon consideration and *argument* of counsel, adjudged, ordered, and decreed that the said partition of said tract of land, made as last aforesaid, whereby the said plaintiff and the said McDonald are each assigned the one equal moiety thereof, be, and the same is, approved and confirmed; and the said defendant Lawson,

297 having heretofore filed his petition, among other things, to review, reverse, and set aside so much of the former decree rendered herein at a former term of this court as decrees and finds that the deficiency in the lands sold by the defendant, Anthony Lawson, to the plaintiff, George R. C. Floyd, by the contract of the — day of December, 1857, is 408 acres; and it appearing to the court by the said report and plat of said Surveyor Cole that said deficiency is only three hundred and sixty-eight acres, it is therefore further adjudged, ordered, and decreed that said former decree be, and the same is hereby, reformed and modified so far as it ascertains said deficiency to be four hundred and eight acres, to be instead thereof three hundred and sixty-eight acres, the true amount of said deficiency, which said quantity of three hundred and sixty-eight acres is now adjudged, ordered, and decreed to be the true amount of said deficiency; and it is further adjudged, ordered, and decreed that the report of Commissioner Fountaine, heretofore made in this cause, be recommitted to him with instructions to make a full & complete report of the matters and things contained in the decree of reference to him, and to report upon such other matters and

298 things pertaining to this suit as either party thereto may in writing require; and the court, without now deciding upon the question of costs in this suit, adjudge*des*, orders, & decrees that the costs of said survey and partition be now paid as follows: For traveling to make said survey and returning, and the time occupied in doing

the surveying ordered by said Lawson, to be paid by said Lawson, and for the surveying done for said plaintiff the same to be paid by the plaintiff; but this order is not to affect the final decree for costs to be rendered in this cause; and it is further adjudged, ordered, and decreed that the said Anthony Lawson do make and execute a proper and apt deed of partition to said Astinax McDonald, conveying to him the said 333 acres, the moiety aforesaid of the said tract of land supposed to contain 700 acres, according to the metes and bounds thereof set out in the said report and plat of said Surveyor Cole, as follows: Beginning at a stake, near Fig. 36, on said Cole's map, where the old line between McDonald and Lawson would intersect the front line of the said 700 acres, thence with lines of the 700 acres N. 26 W. — poles to 3 dogwoods at Fig. 49½; N. 87½ E. 209 poles to a hickory & ash at 48; S. 60 E. 225 poles to
299 2 dogwoods at Fig. 47; thence S. 82¾ W. 215 poles to two chestnut oaks on a knob at 25; thence with the ridge on the lower side of Sugar Camp branch to the beginning; and upon his failure to do so within 90 days from the rising of this court, that Peter Fountaine, who is hereby appointed a special commissioner for that purpose, do, for and in the name and on the behalf of the said Anthony Lawson, make, sign, seal, acknowledge for record, and deliver such deed, and for so doing he is allowed a fee of $5.00, to be paid by said Lawson; and it appearing to the court from the affidavit of the plaintiff, Geo. R. C. Floyd, that since the defendant, Astenax McDonald, has been in possession of the forty acres ascertained by the decree to be the property of said plaintiff Floyd, on an equal partition of the 700 acres as adjudged, and that, being in such possession, the said McDonald has cut, taken, & removed from said forty acres valuable timber & converted the same to his own use, it is further ordered that the commissioner, Fountaine, take & report, in addition to the matters now to be reported by him, the value of such timber as at the time of its taking and conversion as well as its value at the present time, as being wrongfully taken.

300 The report of Surveyor John L. Cole and the map filed therewith, referred to in the foregoing decree, is in the words, figures, and lines following, to wit:

Report of Surveyor John L. Cole.

In the District Court of the United States for the District of West Va. In Chancery.

GEORGE R. C. FLOYD

vs.

ANTHONY LAWSON *et al.*

In obedience to a decree entered in said cause at Charleston, W. Va., on the 20th day of May, 1882, and in pursuance of notice agreed upon by C. C. Watts and James H. Ferguson, attorneys for the plain-

tiff and defendants, I left Charleston on Saturday, August 26th, 1882, and arrived upon the land in the bill mentioned on Tuesday, the 29th. I began to survey at the remaining one of 2 box-elders, corner to the land in the bill mentioned and corner to Astinax McDonald, about 3 poles from low-mater mark, on the east side of Guyandotte river, and running thence up said river and keeping 3 poles therefrom (it being impractica-l- to follow water's edge), from figure 37 on the plat S. 27 W. 40 poles, S. 1° W. 30 poles, S. 29½ W. 52 poles, S. 33½ W. 28 poles, S. 40 W. 18 poles, S. 49 W. 32 poles, S. 58 W. 30 poles, S. 74 W. 54 poles, S. 29 W. 26 poles, S. 47 E. 50 poles, S. 20 E. 46 poles, S. 10 W. 32 poles, S. 20 W. 16 poles, S. 31 W. 30 poles, S. 12 E. 10 poles,
S. 59 E. 34 poles, S. 73 E. 19 poles, to figure 8; thence leaving
301 the river with the line of the hotel lot N. 18 E., passing the back corner of the public square 27 poles to figure 9; thence S. 71 E. parallel to the back line of the public square, 37 poles to figure 10, N. 22½ E. 14 poles to Fig. 11, S. 71 E. 16 poles to 2 small a-lan*thus* trees on Kezer's br. at 12; thence up the branch N. 26 E. 53 poles to Fig. 13, between a blazed walnut tree and the branch, N. 44 E. 36 poles to 14, N. 50 E. 12 poles to Fig. 15 and a pawpaw bush marked as a pointer a few feet north of the foot of a cascade with a slick-rock bed and at the head of a small pool; thence leaving Kezer's branch and running up a steep hill N. 30 W. 63¼ poles (call being 66 poles) to a white oak stump shown to me by Astinax McDonald and Hickman S. White at Fig. 16 on a big bench on the point ridge leading down to Logan C. H., corner to Gore and Christian and beginning, corner to a survey of 700 acres made for Anthony Lawson, 5th March, 1885; thence with the line of Gore and Christian and the line of said 700 acres reversed, N. 84 E. 66 poles for a poplar and 2 gums at Fig. 17, corner to Gore and Christian, also corner to Thomas Dunn English; thence with two lines of English N. 41 E. 53 poles (call being N. 38 E. 64 poles) up a steep hill to 2 rocks and a chestnut oak at Fig. 18 on the top of the ridge of Kezer's & Sugar Camp branch; thence with another line of English N. 63 E. 165 poles for 2 chesnut oaks and 2 small chestnuts on the ridge at the head of Kezer's branch at Fig.
19 (this corner is gone); thence leaving English and con-
302 tinuing with the lines of said 700 acres N. 55 E. 200 poles to a stake 4 poles to the right or S. W. of 2 white oaks and 2 chestnut oaks marked with a knife and claimed to have been made by Anderson Dingess as corner to the land sold by the defendant Lawson to the plaintiff, Floyd, at Fig. 20, on top of the ridge, between Peach creek and Lingess branch. At the request of Geo. R. C. Floyd, the plaintiff, I here left the outline of the 700 acres and ran by notes made by Anderson Dingess copied from the bill, and which notes Floyd claims to be in accordance with an agreement made between Lawson, Floyd, & Johnson August 3d, 1871, and filed in the cause. By said notes I ran from Fig. 20 along the ridge S. 85 W. 23 poles to a chestnut tree on a knob marked with a knife at Fig. 21, N. 56 W. 14 poles to two small chestnut trees at Fig. 22 marked with a knife, S. 70 W. 30 poles to Fig. 23, S. 73 W. 22 poles

to Fig. 24, N. 53 W. 62 poles to two chestnut oaks on a knob, near the head of the Sugar Camp branch, marked with a knife at Fig. 25; thence with the ridge on the N. W. on lower side of said branch N. 54 W. 24 poles to 2 small chestnut trees at Fig. 26, S. 78 W. 28 poles to a hickory at Fig. 27, S. 58 W. 31 poles to 2 small pines at Fig. 28, S. 75 W. 20 poles to Fig. 29, on the left of Summit cliff,
303 that threw us off the ridge; N. 84 W. 50 poles to Fig. 30, on the ridge again; thence along the ridge between said branch and the next branch below S. 86 W. 18 poles to Fig. 31, S. 73 W. 14 poles to Fig. 32, west 21 poles 23 links to Fig. 33, N. 74¾ W. 8 poles to Fig. 34, N. 65½ W. 9 poles to Fig. 35; thence leaving the point of the ridge N. 80¼ W. 54 poles to the end of an old cross-fence shown by Astinax McDonald as the old line between McDonald & Lawson at Fig. 36; thence with said fence line N. 70½ W. 27 poles to the beginning, containing by latitude & departure calculation 593 acres.

Having thus finished the surveying required by the plaintiff, I then, at the instance of Judge Ferguson, for Lawson, resumed the line of said 700 acres at Fig. 20, where I had left it, and continued N. 55 E. 97 poles further, or, in all, from Fig. 19, 297 poles (the call being 326), to 2 dogwoods marked as corner, at the head of the right-hand fork of Peach creek, at figure 47, corner to Edward McDonald. The beech called for is gone. Thence with next line N. 60 W. 225 poles to an ash and hickory on a middle point between 2 drains of Peach creek at Fig. 48; thence with next line S. 87½ W. 209 poles to three dogwoods at Fig. 49, corner to Lewis McDonald; thence S. 26 E. 200 poles to a stake at the point of the hill on the lower side of Sugar Camp br., near the house of Hain. McDonald, at
304 Fig. 49; thence up said branch on the lower side N. 75¼ E. 12 poles for a beech at 50, S. 79 E. 64 poles to 51 by a drain; N. 50 E. 34 poles to 52 on a steep hill side on lower side of said branch; thence S. 38¼ W. 164 poles for 4 dogwoods at 53; thence S. 27 W. 24 poles, and S. 29 E. 38 poles back to the white-oak stump at Fig. 16, the beginning corner of said 700 acres. The lines of the "700 acres," thus run, contain 666 acres, of this 293 acres lies above the ridge below Sugar Camp branch and within the boundary that Floyd claims to limit his purchase from Lawson, and 373 acres lies below said ridge and outside of said purchase according to the pretensions of Floyd's location. If the "700" acres is to be divided by quantity, then each party is entitled to 333 acres, and 40 acres more of that tract must be added to Floyd's 293 acres to make 333 acres, or one-half of the tract. In order to add this I cut off the triangle from Fig. 47 S. 82¾ W. 215 poles to 2 chestnut oaks on a knob at Fig. 25. The addition of this triangle would give Floyd one-half or 333 acres of the "700" acres (which by calculation is 666 acres), and add 40 acres to his 593 and make his purchase from Floyd 633 instead of 593 acres. The decree required me to "go upon the land in controversy, and especially upon the said '700' acres, and
305 survey and lay off the same and make partition thereof, assigning to Astinax McDonald all the land embraced in his deed from Lawson, rerunning the dividing line, if any is called for,

in the deed according to the call and terms of said deed." I find at Logan C. H., in Deed Book E, page 516, a deed from Lawson to Astinax McDonald, dated 3d Sept., 1872, "for all that part of the 700 acres lying below the top of the ridge below Sugar Camp branch, not sold to G. R. C. Floyd, containing 350 acres, more or less." Now, from the front line of the 700 acres, near Fig. 36, as far back as the ridge named extends, say, to Fig. 25, the intention of this deed is clear, but after leaving 25 toward the back line it seems that there is nothing but quantity to control—that is, $\frac{350}{700}$, or one moiety of the survey, which measured, as I have stated above, only 666 acres.

Again, the Floyd, Johnson, & Lawson agreement of August 3d, 1871, describes the land sold by Lawson to Floyd as follows: * * * "thence down the river to box-elders at the lower end of said Lawson's land" (37); "thence with the division line between said Lawson & McDonald land" (36); "thence up the point of the ridge below Sugar Camp Hollow to the back line of said Lawson's land; thence with the back line, &c., and down Kezer's branch to the beginning." In
306 the usual language of surveyors, the line most remote from the river front—that is, the line from 47 to 48, and even on to 49½, would be back line; then I think Floyd's line ought not—have left the outline of the 700 acres at Fig. 20, but should have continued with that line to the back line at Fig. 47; then, if necessary for quantity, he should have followed the back line toward Fig. 48 far enough that a straight line to the Sugar Camp branch ridge, and continuing with that ridge toward the river, would have left one-half of the 700 acres to Floyd and the other half to Astinax McDonald. I have examined the Floyd and Lawson agreement of Dec. 2, 1857, and it simply gives to Floyd all of the 700 acres that Anthony Lawson owned. The records of Logan county seem to show that Anthony owned the whole of it, but it is commonly understood in the neighborhood of the land that James Lawson, who was, in 1857, the county surveyor of Logan county, wished to locate the said 700 acres, but, being the county surveyor, did not wish to locate it in his own name, and that he therefore made the location in the name of his brother Anthony, with the understanding that each should have a moiety, and that Anthony's deed to Astinax was made to carry out that understanding.

307 If the plaintiff's construction of the boundary is right, then the first boundary herein given shows the tract sold by Lawson to Floyd, and it is represented by the figures on the plat from Fig. 1 to Fig. 46 in their order; but if the defendant is right, then we follow the same boundary from Fig. 1 to 20; thence N. 55 E. 97 poles to Fig. 47; thence S. 82¾ W. 215 poles to the 2 chestnut oaks on a knob at Fig. 25; thence with the figures in their order to Fig. 46, and bounded thus it will contain one-half of the ascertained area of the "700" acres, and will, altogether, contain 633 acres instead of 593 acres, as claimed by the defendant. I have filed my calculation of the 593 acres. I would further state that the lower ridge of Sugar Camp branch may run on from Fig. 25 further toward Fig. 24, but after passing Fig. 25 its direction is from and not to the back line.

The line from Fig. 47 to Fig. 25 is a protracted line. Both Floyd and Astinax McDonald were asked if they wanted it actually run, and they said "No." At the instance of the plaintiff I have laid down in red ink a plan of Floyd's addition to the town of Aracoma, with its principal streets. The alleys are not represented on account of the smallness of the scale. I also, at instance of Floyd, ran a line from O, at the N. W. corner of the C. H. square, S. 71 E. 8 poles to P; thence N. 27 E. with the range of H. S. White's hill fence to O. All of which is respectfully reported.

JOHN L. COLE,
Special Surveyor.

	N.	S.	E.	W.			N. areas.	S. areas.
(1) S. 47° E. 50 pls.		34.10	36.57		1	36.57		124,703.70
(2) S. 20 E. 46 "		43.23	15.73		2	88.87		384,185.01
(3) S. 10 W. 32 "		31.41		6.11	3	98.49		309,357.09
(4) S. 20 W. 16 "		15.04		5.47	4	86.91		130,712.64
(5) S. 31 W. 30 "		25.71		15.45	5	65.99		169,660.29
(6) S. 12 E. 10 "		9.78	2.08		6	52.62		51,462.36
(7) S. 59 E. 34		17.51	29.14		7	83.84		146,793.84
(8) S. 73 E. 19		5.56	18.17		8	131.15		72,919.40
(9) N. 18 E. 27	17.12		5.56		9	154.88	265,154.56	
(10) S. 71 E. 37		12.05	34.98		10	195.42		24,383.10
(11) N. 22½ E. 14	12.43		5.36		11	235.76	293,049.68	
(12) S. 71 E. 16		5.21	15 13		12	256.25		133,506.25
(13) N. 26 E. 53	47.64		23.23		13	294.61	1,403,532.04	
(14) N. 44 E. 36	25.90		25.01		14	342.85	887,981.50	
(15) N. 50 E. 12	7.71		9.19		15	377.05	290,705.55	
(16) N. 3 W. 63.25	63.15		3.31		16	389.55	2,460,008.25	
(17) N. 84 E. 66	6.90		65.64		17	458.50	316,365.00	
(18) N. 41 E 53	40.00		34.77		18	558.91	2,235,640.00	
(19) N. 63 E. 165	74.91		148.02		19	741.70	5,556,074.70	
(20) No. 55 E. 200 "	114.72		163.84		20	1,053.56	12,076,440.32	
(21) S. 85 W. 23 "		2.00		22.91	21	1,194.49		238,988.00
(22) N. 56 W. 14 "	7.83			11.61	22	1,159.97	908,256.51	
(23) S. 70 W. 30		10.26		28.19	23	1,120.17		1,149,294.42
(24) S. 73 W. 22		6.43		21.04	24	1,070.94		688,614.42
(25) N. 53 W. 62	37.31			49.52	25	1,000 38	3,732,417.78	
(26) S. 54 W. 24		14.11		19.42	26	931.44		1,314,261.84
(27) S. 78 W. 28		5.82		27.39	27	884.63		514,854.66
(28) S. 58 W. 31		16.43		26.29	28	830.95		1,365,250.85
(29) S. 75 W. 20		5.18		19.32	29	785.34		406.806.12
(30) N. 84 W. 50	5.33			49.73	30	716.29	381,782.57	

308½

(31) S. 86 W. 18		1.26		17.96	31	648.60		81,783.60
(32) S. 73 W. 14		4.09		13.39	32	617.25		252,455.25
(33) West 21.91				21.91	33	581.95		
(34) N. 74½ W. 8	2.14			7.71	34	552.33	118,198.62	
(35) N. 65½ W. 9 "	3.73			8.19	35	536.43	199,088.39	
(36) N. 80¼ W. 54 "	8.91			53.26	36	474.98	423,207.18	
(37) N. 70½ W. 27	9.01			25.45	37	396.27	357,039.27	
(38) S. 27 W. 40		35.64		18.16	38	352.66		1,256,880.24
(39) S. 1 W. 30		30.00		.52	39	333.98		1,001,940.00
(40) S. 29½ W. 52		45.26		25.61	40	307.85		1,393,329.10
(41) S. 33½ W. 28		23.35		15 45	41	266.79		622,954.65
(42) S. 40 W. 18		13.97		11.57	42	239.77		334,958.69
(43) S. 49 W. 32		20.99		24.15	43	204.05		428,300.95
(44) S. 58 W. 30		15.90		25.44	44	154.46		245,591.40
(45) S. 74 W. 54		14 88		51.91	45	77.11		114,739.68
(46) S. 29 W. 26		22.74		12.60	46	12.60		28,652.40
							31,704,941.92	13,087,189.95

North areas 31,704,941.92
South areas 13,087,189.95

2)18,617,751.97

160) 9308875.93 (581 $\frac{5}{10}$
800

1308
1280

288
160

1287

Within the lines actually run there is as above 581.80 acres,
To which is added a strip of river bank 3 poles wide
for a distance of 572 poles ---------- 10
And one acre on the ridge left out between figures 28
& 30 on account of cliffs ---------- 1.20

593 A.

(Here follows diagram marked p. 309.)

310 And at another day, to wit, at a district court of the United States for the district aforesaid, held at Charleston on the 5th day of May, 1883:

This day Peter Fountain, a commissioner of this court, presented a report made by him in pursuance of a decree in this cause, and it is ordered that said report be filed.

Which report referred to in the foregoing order, together with the exceptions endorsed thereon, is in the words and figures following, to wit:

311 *Report of Commissioner Fontaine.*

Your undersigned commissioner respectfully reports that on the 18th day of November, 1882, a decree was made and entered in said cause by your said court by which it was provided and ordered, among other things, as follows, viz:

* * * "It is therefore further adjudged, ordered, and decreed that said former decree be, and the same is hereby, reformed and modified, so far as it ascertains said deficiency to be four hundred and eight acres, to be instead thereof three hundred and sixty-eight acres, the true amount of said deficiency, which said quantity of three hundred and sixty-eight acres is now adjudged, ordered, and decreed to be the true amount of said deficiency; and it is further adjudged, ordered, and decreed that the report of Commissioner Fontaine heretofore made in this cause be recommitted to him with instructions to make a full and complete report of the matters and things contained in the decree of reference to him, and to report upon such other matters and things pertaining to this suit as either party thereto may in writing require * * * And it appearing to the court from the affidavit of the plaintiff, George R. C. Floyd, that
312 since the defendant, Alexander (?) (Astyanax) McDonald, has been in possession of the forty acres ascertained by the decree to be the property of said plaintiff Floyd on an equal partition of the 700 acres as adjudged, and that, being in such possession, the said McDonald has cut, taken, and removed from said forty acres valuable timber and converted the same to his own use, it is further ordered that the Commissioner Fontaine take and report, in addition to the matters now to be reported by him, the value of such timber as at the time of its taking and conversion, as well as its value at the present time, as being wrongfully taken."

See decree of Nov'r 16th, 1882.

I gave written notice of the time and place of making report in

answer to said enquiries, which notice was accepted by the attorneys for the complainant, George R. C. Floyd, and by the attorney for the defendants, Anthony Lawson and Astyanax McDonald. The said notice is filed herewith and made a part of this report, marked as Exhibit "A."

313 In response to the requirements of said decree of reference, I would report that since the date of the report that was made by me and filed in this cause on May 4th, 1882, no further evidence has been adduced or proceedings had in this cause which would enable me to report more fully and completely than was done in said report, except as follows:

John L. Cole, surveyor, made a report of a survey of the body of land involved in this cause, which report was filed herein on the 6th day of October, 1882, and, after the filing of said report of survey, the aforesaid decree of November 18, 1882, was made, by which the true amount of the deficiency in acreage of said tract of land was ascertained and adjudged to be 368 acres; and, on the 1st day of May, 1883, the said John L. Cole gave his deposition before me as to "the character, quality, and value per acre of the uncleared mountain land involved in" this cause.

See Exhibit "J. L. C.," filed herewith.

The said deficiency having been ascertained by said decree of November 18th, 1882, to be 368 acres it follows that said decree also ascertained that said tract of land contains in all 632 acres, the said deficiency from 1,000 acres.

314 There is nothing in the said report of Surveyor Cole that shows the number of acres separately in any of the several subdivisions mentioned in the decree of reference of November 23d, 1881.

The only ascertainment of acreage made in said report is as to the whole tract considered as one body of land.

According to the finding of my said report, which, in this particular, is not excepted to by any party to this cause, "the value of the said town lots Nos. 8, 9, 10, 11, and 12 at the time of the contract aforesaid" was $4,500.00.

See page 10 of report, filed May 4, 1882.

The value put upon said lots and the other land which was exchanged by said Lawson with said Floyd by their contract of December 2d, 1857, was $10,000.

See Exhibit "A" with bill of Geo. R. C. Floyd.

Hence, if the values of said lots and of said other land are separated the value put upon the other land would be $10,000, less $4,500 or $5,500.

Hence, the value per acre put upon the said other land was $5.50.

315 The court having decided that the amount of the deficiency in said other land is 368 acres "the amount of abatement in money" to be allowed by reason of said deficiency "is found by multiplying the number of acres of deficiency (viz., 368) by the price per acre (viz., $5.50), which gives $2,024.00.

Computing interest on this sum of $2,024 from the 8th day of

January, 1858 (the date from which the deferred instalments due from Lawson, according to said contract, Ex. "A," are made to bear interest), to May 5, 1883, we have the following statement:

Principal of abatement, $5.50 x 368	$2,024 00
Interest on $2,024 from Jan'y 8, 1858, to May 5, 1883	3,076 48
Total due	$5,100 48

No evidence has been furnished to me of the value of the timber taken from said 40 acres of land by the said McDonald, and I cannot find among the papers of this cause the affidavit of the complainant relating to said timber, and hence I cannot report upon this enquiry.

The following requirements have been made in writing in this cause, viz:

"To Peter Fontaine, commissioner:

"You are hereby required to report from the bill and answers and the depositions taken in the cause and the exhibits filed therewith—

316 "1. What title to or interest in the two tracts of land sold by the plaintiff Floyd in 1857 to the defendant Lawson did the said Floyd have at the time of said sale.

"2. Who conveyed said farms or tracts of land and each of them to Lawson, and did or not the plaintiff join in either of the conveyances.

"3. In what capacity did Lawson deal with the plaintiff as to the Waterford place, and who owned and had title to that place at the time of said sale; and what negotiations, if any, did Lawson have with any person other than the plaintiff as to said place, and the name of such person.

"4. Did Lawson, at the time of the writing of the contract of 1857, or of the 2d or compromise contract, mentioned in the bill and answers, or at any other time, represent to Floyd or to any one that the Logan lands mentioned in said contracts contained 1,000 acres, or any specific number of acres (see depositions of Floyd, Johnson, and Lawson on this subject), and if not, what representations, if any, did he make as to the quantity of the land; and

"5. The character, quality, and value per acre of the uncleared mountain land, as nearly as can be ascertained from the testimony, and upon this matter I desire you to take the testimony of John L. Cole, the surveyor of the land.

317 JAMES H. FERGUSON,
Of Counsel for Defendant Lawson."

See Exhibit "J. H. F." 2, filed herewith.

In answer to said 1st inquiry I report as follows:

The complainant, George R. C. Floyd, alleges in his bill in this cause (see Ex. "G. R. C. F.," p. 1) that on December 2, 1857, he made a contract with the defendant, Anthony Lawson, for an exchange of

lands, the complainant selling on his part two tracts of land situated in Tazewell county, Virginia, one known as the Waterford place and supposed to contain 802 acres, and the other known as the Smith place and supposed to contain 467 acres; and that the title to the first-named tract was in John B. Floyd and the complainant, and the title to the second tract was in one Ballard P. Smith; and the complainant agreed with said Lawson to procure deeds to him, with covenants of general warranty and relinquishment of dower, on the payment of the purchase-money agreed on, and was to deliver up possession of said lands to said Lawson at once. See Ex. "G. R. C. F." 2, pages 1–2.

But in the copy of the said contract, which is filed with and made a part of said bill as Exhibit "A," it is stated that "the title
318 to the Waterford place is in John B. Floyd, and the said Geo. R. C. Floyd binds himself to procure a deed therefor to the said Lawson with general warranty and relinquishment of dower; and the title to the Smith place is in one Ballard P. Smith, who will make a deed therefor," &c., &c.

See Ex. "A," with said bill, and Exhibit "A. L.," p. 4, answer to 5th question.

I therefore report that at the date of said contract, viz., December 2d, 1857, the complainant, George R. C. Floyd, did not have title to either said Waterford place or said Smith place, but the title to said Waterford place was in John B. Floyd, and the title to said Smith place in Ballard P. Smith.

The only other evidence of or allusion to an "interest" of said George R. C. Floyd in said parcels of land is found in the answer of the defendant Anthony Lawson, which is filed in this cause, and his cross-bill. In said answer (at the bottom of page 8 and top of page 9) the following allegation is made, viz:

"The said plaintiff, as stated in his bill, was financially embarrassed at the time of and before said contract. He had purchased the said Smith lands at a judicial sale and failed to pay for
319 them, and the said contract was a necessity to him and not to this defendant.

"By it he got his debt to Smith paid off and discharged," &c., &c.

In said cross-bill the allegation is made "That the Smith place mentioned in said contract had previously been purchased by the said George R. C. Floyd at a judicial sale and that he had not complied with the terms of said sale by paying the purchase-money or any part thereof," &c., &c.

See cross-bill of A. Lawson, pages 3, 4.

In answer to said 2d enquiry, I report as follows:

It is alleged in said answer of A. Lawson that John B. Floyd told him that he would convey the Waterford place to the defendant, which he afterwards did, as agreed.

See answer of A. Lawson, page 6.

And in said cross-bill it is alleged that "he (George R. C. Floyd) was no party to the deed for the Waterford place, which he did not own and had no interest in, nor to the deed to the Smith place," &c.

See cross-bill of A. Lawson, page 4.

I therefore report that John B. Floyd conveyed the said Waterford place to the said Anthony Lawson, and that the plaintiff did not join in said conveyance, and that said plaintiff did not join in the conveyance of said Smith place to said Lawson, but it does not appear in this cause who did make the conveyance of said Smith
320 place to said Lawson.

In answer to said 3d inquiry, I report that Lawson dealt with the plaintiff in the capacity of an agent as to the Waterford place, and that at the time of said sale John B. Floyd owned and had title to said Waterford place.

See bill of G. R. C. Floyd, page 1, and Exhibit "A" therewith; answer of A. Lawson, p. 6; cross-bill of A. Lawson, page 4, and same cross-bill, pages 2, 3, Ex. "A. L.," p. 4, 5th ans.

In answer to that part of said enquiry which is in the following words, viz.: "And what negotiations, if any, did Lawson have with any person other than the plaintiff as to said place, and the name of such person?" I report as follows:

It is alleged in said answer of the defendant Anthony Lawson (see page 5): * * * "This defendant avers the fact to be that the said contract for the sale of the said Tazewell lands to this defendant was first proposed by the said plaintiff to this defendant in the county of Tazewell in the month of April, 1857." * * *

"But, in consequence of the title to said Waterford place being in John B. Floyd, the brother of the plaintiff, and not in the said plaintiff, and this respondent not having the same gushing confidence in the said plaintiff that said plaintiff says in his bill he had in him, and for several other reasons not necessary to mention, the said contract was not executed at that time; that some
321 time afterwards this defendant visited the said John B. Floyd in the city of Washington in relation to said contract, and that said Floyd told him his brother, the plaintiff, had already written to him stating the terms of the contract proposed on both sides, with which terms he was satisfied, and to go on and make the contract with the said plaintiff, and he would ratify it and convey the said Waterford place to this defendant, which he afterwards did, as agreed."

See answer of A. Lawson, pages 5–6.

Allegations to the same effect are also made in the said cross-bill of the defendant, Anthony Lawson.

See cross-bill of A. Lawson, pages 2–3.

I therefore report that negotiations of the character indicated in the above quotation from said answer were had by said Lawson with John B. Floyd as to said Waterford place.

In answer to the said 4th enquiry I report as follows:

The grievance of the bill of the complainant Floyd is that the defendant Lawson represented to him, at the time of entering into said contract that the said Logan lands contained "about one thousand acres," and thus induced him to make said contract.
322 See bill of G. R. C. Floyd, pages 7, 8, &c., &c.

And the copy of said contract, which is filed with said bill

as Exhibit "A," designates said land as "about 1,000 acres of land lying," &c., &c.

And the said plaintiff states in his deposition given and filed in this cause that said sale "was a sale by the acre" (see page 3 Ex. "G. R. C. F," answer to 9th question), and that "He" (Lawson) "always told me there was one thousand acres, and so put it in the title bond."

See Ex. "G. R. C. F.," page 16, answer to 5th question on re-examination.

On the contrary, the defendant, Anthony Lawson, denies in his answer filed in this cause that he represented at the time of the execution of said contract that said land contained one thousand acres, and says that at that time he distinctly stated to the plaintiff in substance that he did not know the quantity of land in the tract, and that he was unwilling to guarantee any particular quantity of acres in said tract and explains the circumstances under which the expression "about one thousand acres" was inserted in said contract (Ex. "A"), and says that said sale was a sale in gross and not by the acre, and was so understood by the plaintiff and himself.

See answer of A. Lawson, page 4, *et seq.*

323 And in his deposition given and filed in this cause the said defendant, Anthony Lawson, also states that the said sale was a sale in gross and explains the circumstances under which said contract was made.

See dep. of A. Lawson, Ex. "A. L.," pages 2, 3, 4, 5.

And in his said cross-bill the said defendant, Anthony Lawson, reports substantially the same allegations as above indicated as to the making of said contract and the use therein of the expression "about one thousand acres."

See cross-bill of A. Lawson, page 5, *et seq.*

And John W. Johnston states in his deposition given and filed in this cause: * * * "I wrote the contract" (that of August 3d, 1871), "Mess. Floyd and Lawson sitting at the table. When I came to that part of the contract where I had to describe the number of acres I asked the question, addressed to both of them, How many acres there were? Mr. Floyd said, "A thousand." Mr. Lawson said "No, I won't be bound to any particular number of acres; there are several tracts, and I don't know how they would run out." Then I used the language contained in the contract describing the land, which seemed to be satisfactory to them both."

See dep. of J. W. Johnston, Ex. "J. W. J.," page 9.

The said defendant Lawson also states in his said answer, deposition, and cross-bill that he paid in said exchange of lands for said

324 Waterford place $16,000, when he knew that he could purchase it for $10,000 cash, and had been offered said place for said sum of $10,000.

See answer of A. Lawson, pages 6, 7, and deposition of same, page 4, answer 5th, and cross-bill of same, pages 2, 3.

And that he agreed to pay said sum of $16,000 for said Waterford place in consideration of his being allowed $10,000 for his Logan lands.

See same reference as last referred to.

The said contract was reduced to writing as aforesaid on December 2d, 1857, but the said plaintiff did not have the said lands surveyed until "the fall of 1875" (see bill, p. 9, 4th line from top), and it does not appear that he raised any question of their acreage before that time, although, as he states, "He executed said contract, took possession of said lands and entered upon the same, and has ever since exercised acts of ownership thereto and paid the taxes thereon."

See bill, p. 8, 10th line from bottom.

Unless the said decrees of November 23, 1881, and November 18, 1882, are to be considered as finally settling the question of the representations of said Lawson as to said lands and adjudging said contract to be a sale by the acre, I would say, from a careful consideration of everything in this case bearing on this question, that
325 the said Lawson did not represent the said lands to contain 1,000 acres or any specific number of acres, and that the said sale was made in gross and not by the acre.

I reach this conclusion after considering the allegations and evidence of the said Floyd and Lawson when relating to the same subject and conflicting as offsetting and neutralizing each other and from considering the other evidence and attendant circumstances of the case.

In answer to the said 5th inquiry as to "the character, quality, and value per acre of the uncleared mountain land," I report that it is "rough & steep, with but little marketable timber on it."

The witness John L. Cole rates it at $1.50 per acre. Possibly a more correct estimate of its value per acre than was made in my former report (viz., 50c.) is $1.00. I have not been required by any one to report upon any other matters except those above specified.

This report is completed and most respectfully submitted this 4th day of May, 1883.

PETER FONTAINE,
Com'r U. S. C., D. W. Va.

326 *Exception of Complainant to Foregoing Report.*

The complainant excepts and objects to the report of Commissioner Fontaine filed in this cause on the 5th May, 1883, on all the matters contained therein, except as to the report of the said commissioner which, on ascertaining the value of 368 acres, fixes and reports that value at the sum of $5,100.48. This the complainant, Geo. R. C. Floyd, in accordance with the former decree of this court, contends settles and decides the question involved in this suit as to the amount of compensation due him under the decree of this court. All the other matters reported were *non judice* before the commissioner. They have all been decided by the court and are now *res adjudicata*.

The matter referred by the order of the court as to the timber that might have — taken upon the lands, exceeding the 368 acres, the plaintiff and complainant filed no evidence and makes no claim.

C. C. WATTS &
S. A. MILLER,
Att'ys for Floyd.

Exceptions of the defendant, Anthony Lawson, to the foregoing report are as follows:

The defendant, Anthony Lawson, excepts to that part of the re-
report of Commissioner Fontaine which finds that $5,100.48 is the
sum to which the plaintiff Floyd is entitled by way of abate-
327 ment of the purchase-money due to defendant Lawson for
the Logan lands in the bill and proceedings mentioned—

1st. Because the said plaintiff is not the owner of said lands, either in law or equity.

2d. Because if anything is due from said defendant to any person by way of such abatement it is due to the devisees of Mrs. Sally B. Floyd, who was the devisee of General John B. Floyd, the owner of said lands, and not to the plaintiff.

3d. Because the said sum so reported is excessive in any view of the case of which it is susceptible; and

4th. Because the sale of said lands was a sale in gross and not a sale by the acre, and, therefore, neither the plaintiff nor the devisees aforesaid are entitled to anything in this cause by way of abatement of said purchase-money or otherwise.

ANTHONY LAWSON, *Def't,*
By Counsel.
JAMES H. FERGUSON, *Sol.*

And at another day, to wit, at a district court of the United States for the district aforesaid, held at Charleston on the 8th day of November, 1883:

Master Commissioner Joseph Ruffner this day tendered his report in this cause, and the same is ordered to be filed, which report is in the words and figures following, to wit:

328 *Master's Report.*

District Court of the U. S., Dist. of W. Va. In Chancery.

GEORGE R. C. FLOYD *v.* A. LAWSON *& als.*

To the Hon. John J. Jackson, judge of said court:

Pursuant to the decree made in this cause on the 28th day of May, 1883, I served notice of the time and place of commencing the taking of the account required by said decree upon the counsel of the various parties to this cause, which notices, with the acceptances of service thereon endorsed, are herewith returned *with* and made part of this report.

On the 25th day of August, 1883, at nine o'clock a. m., at my office in Charleston, in said district (being the time and place designated in said notice for commencing the execution of said order of reference), I commenced the taking of the required account, and the same not being then completed further proceedings were adjourned from time to time until this day.

My duties under said reference are fully indicated in the following quotation from said decree, to wit: "And it appearing
329 to the court from the proceedings heretofore had in this cause, other than what has been adjudicated herein by this decree, that there are certain rights, equities, payments, & other matters to be adjudicated by and between the parties to this suit, arising under the contract of the 3d day of August, 1871, and sales of land made under the same by said complainant, Floyd, and by James M. Payne, agent, and Joseph E. Chilton, special commissioner in this cause, it is ordered that this cause be referred to Master Joseph Ruffner to enquire and report into the matters aforesaid, arising under said contract, the sales made as aforesaid under the same, and affecting the rights of the complainant, Floyd, the defendants, Lawson and John W. Johnston, the amounts realized and applied by any one in the whole subject-matter, and to whom and on what account, and to report any other matters which the parties, or any of them, may require or the said master may deem pertinent."

By the report of Com'r Fontaine of the 3d of May, 1883, the amount of abatement to which the complainant, Floyd, was entitled under the contract of 1857, was ascertained to be $2,024.00, with interest thereon from the 8th day of January, 1858.

By the agreement of the 3d day of August, 1871, the complainant, Floyd, was indebted to defendant Lawson in the sum of
330 $5,051.30. In the statement hereafter made interest is to be computed on the amount of abatement allowed from the said 8th day of January, 1858, up to the 3d day of August, 1871, and the whole amount of principal and interest deducted from the said amount so understood to be due from Floyd to Lawson on that day.

In computing the account Lawson will be charged with the amounts paid him by Johnson, with interest, the amounts paid him by Floyd, with interest, the amounts paid him by purchasers of the lands in controversy, and with the amounts realized by Johnson from the sales made of such lands, and the costs and expenses of such sales. He will be credited with amounts refunded to Johnson.

Johnson will be charged with the amounts received by him, less costs & expenses of sales, and credited with expenses incurred and amounts paid by him for Floyd to Lawson, and also for certain taxes paid by him.

By decree of May 19, 1880, the amount found due to Johnson was "$4,184, with the interest due thereon under the provisions of the contract" of August 3, 1871, and the taxes for the year 1878, amounting to $108.31.

A sale of certain of the lands mentioned in the proceedings was directed and made by Joseph E. Chilton, who was appointed a commi'r for that purpose, to satisfy the indebtedness to Johnson, and from the report of said comm'r I find the following amounts have been collected by said comm'r from the sales made by him :

331

Am't on purchase by Floyd:	Cash payment		900
" " "	1st deferred payment		1,395 00
" " "	H. S. White, cash "		101 25
" " "	J. S. De Jarnett, " "		85 00
" " "	M. D. Hale, " "		52 25
" paid by C. L. Hudgins			429 00
" " Jno. Chafin on lots 17 & 18, cash p'm't			119
" " " " " 2 payments			100
" collected from sale of Wm. Chafin's lots			109 25
Bro't forward			$3,290 75

Expenses were as follows:

Paid Wayne Advocate for 3 advertisements		$54 75	
Commissions on $900	45 00		
" $1,395	69 75		
" $955, sales to White, Hale, & De Jarnett	$47 75		
		$162 50	
			217 25
Net proceeds			$3,073 50

Amounts paid Johnson's attorney, J. M. Payne:

1881, Feb. 19		$99 50	
" Nov. 18		834 75	
1882, May 10		429 00	
" " 12		109 25	
" " 17		175 75	
" June 9 (Floyd's note by Lawson)		1,325 25	
" Sept. 2		100	
		3,073 50	3,073 50

In addition to these amounts Johnson has received, as per statement of Payne, his attorney, filed herewith the following:

1883, May 31.	From sale to M. D. Hale, through J. E. Chilton	$53	
" Oct. 29.	" " "	44 85	
			$97 85

332 This amount was collected by Com'r Chilton after the date of his report and is less the commissions.

The amount collected was	$103	
5% commissions deducted	5 15	
		97 85

The following amounts remain uncollected; they are represented by notes given by the purchasers of said lands or lots:

Note of G. R. C. Floyd, dated Nov'r 15, 1881, due M'ch 15, '83	$1,350 00
Note of John S. Dejarnatt, dated M'ch 30, '82, @ 8 mos., for	123 50
Note of John S. Dejarnatt, dated M'ch 30, '82, @ 16 mos., for	123 50
Note of H. S. White, dated M'ch 30, '82, @ 8 mos., for	151 87
" " " " " " " " 16 " "	151 87
Note of Martin D. Hale dated M'ch 30, '82, @ 16 mos., (*a*) (bal.), for	73 70
(Bal. should bear interest from Oct. 29, '83.)	
Note of Jno. Chafin, dated Dec. 17, '80, @ 8 mos., (*a*) (bal.), for	96 80
(Bal. should bear interest from Sep. 2, 1882.)	
Note of Jno. Chafin, dated Dec. 17, '80, @ 16 mos., for	178 50
" " Wm. Chafin, " M'ch 27, '82, @ 8 mos., for	195
" " " " " " " " 16 " "	195 00
	$2,639 74

The dates of the payments made by Com'r Chilton to Johnston, attorney, are not given by said com'r, but are supplied by said attorney in his sworn statement returned herewith.

333 *Amounts Due Nov.* 1, 1883, *from Sales by Com'r Chilton.*

Note of G. R. C. Floyd (held by Johnston)	$1,350	
Int. from Nov. 15, '81	87 07	
		$1,437 07
Two notes of J. S. Dejarnett, each for $123.50	257 00	
Int. from M'ch 30, '82	10 00	
		267 00
Two notes of H. S. White, each for $151.87	303 74	
Int. from M'ch 30, '82	10 63	
		314 37
Bal. due on note of M. Hale	73 70	
Int. from October 29, 1883	25	
		73 95
Bal. due on 1st note of Jno. Chafin	96 80	
Int. from Sept. 2d, 1882	6 77	
		103 57
Second note of Jno. Chafin for	178 50	
Int. from Dec'r 17, 1880	30 89	
		209 39
Two notes of Wm. Chafin, each for $195.00	390 00	
Int. from M'ch 27, 1882	37 31	
		427 31
Total due Nov. 1, 1883		$2,832 66
Deduct Comm'r Chilton's commissions		141 63
Net proceeds yet uncollected		$2,691 03

(*a*) The notes of Martin D. Hale are subject to a credit as shown on the preceding page, and the report of Com'r Chilton shows a payment by John Chafin on his notes of $100 made Sept. 2, 1882.

Johnston Debt.

Amounts paid by Johnston.

1874.			
July 10.	Paid Lawson		$1,500 00
" 21.	" "		2,684 00
1878.			
	Paid taxes for this year		108 31
1881.			
July 7.	Paid U. S. marshal fees		32 50
1882.			
May 5.	Paid J. M. Payne for deed, per ord. c't		5 00
			$4,329 81

Amounts received.

334

1881.			
Feb'y 19.	Rec'd from Com'r Chilton		$99 50
Nov. 18.	" " Floyd per Com'r Chilton		834 70
1882.			
May 10.	" " Com'r Chilton		429 00
" 12.	" " " "		109 25
" 17.	" " " "		175 00
June 9.	" " Com'r Chilton (proceeds of Floyd note paid by Lawson)		1,325 25
Sept. 9.	Rec'd from Com'r Chilton		100 00
1883.			
May 31.	" " " "		53 00
Oct. 29.	" " " "		44 85
			$3,170 55

Statement of Johnson's Account.

Floyd, Dr.

1874.			
July 10.	To amount paid Lawson	$1,500 00	
	Int. to Feb. 19, 1881		594 00
" 21.	" am't paid Lawson	2,684 00	
	Int. to Feb. 19, 1881		1,059 28
1879.			
Jan'y 20.	" taxes paid for 1878	108 31	
	Int. to Feb. 19, 1881		7 04
		$4,292 31	$1,660 32
1881.			
Feb'y 19.	By am't paid Com'r Chilton		99 50
" "	Bal. interest due		1,560 82
July 17.	Int. on principal		98 72
" "	To am't paid U. S. marshal fees	35 20	
" "	Am't principal due	$4,327 51	
" "	" interest due		1,659 54
Nov. 18.	Int. on principal to date		94 48
" "	Total interest due to date		1,754 02
" "	By net proceeds of Floyd's cash payment p'r Chilton		834 75
" "	Bal. interest due		919 27
1882.			
May 10.	Int. on prin. from Nov'r 18, '81		124 20
" "	Total interest due		1,043 47

May	10.	To am't paid Payne for making deed p'r order court	5 00	
"	"	Total principal due	$4,332 51	
"	"	By am't paid by Chilton		429 00
"	"	Bal. interest due		614 47
"	12.	Int. on prin., 2 days		1 44
"	"	Total int. due		615 91
"	"	By am't paid by Chafin		109 25
"	"	Bal. int. due		506 66
"	17.	Int. on prin., 5 days		3 61
"	"	Total int. due		510 27
"	"	By am't paid by Chilton, com'r		175 00
"	"	Bal. interest due		335 27
June	9.	Int. on prin. to date		15 88
"	"	Total int. due		351 15
335				
"	"	Principal bro't down		4,332 51
"	"	Total prin. & int. due		$4,683 66
"	"	By proceeds of Floyd's note less Chilton's com'r, paid by Lawson		1,325 25
"	"	Bal. due		3,358 41
Sept.	2.	Int. on bal. to date		46 46
"	"	Total due		3,404 87
"	"	By am't paid by Chilton		100 00
"	"	Bal. due		$3,304 87
1883.				
May	31.	Int. on bal.	148 17	
"	"	By am't paid by Com'r Chilton	53 00	
"	"	Bal. int. due	95 17	
Oct.	29.	Int. on principal	81 52	
"	"	Total interest due	176 69	
"	"	By am't paid by Com'r Chilton	44 85	
"	"	Bal. int. due	131 84	
Nov.	1.	Int. on prin.	55	
"	"	Total interest due		132 39
"	"	Total prin. & int. due		$3,437 26

Lawson debt.

1871.				
Aug.	3.	Am't due as per agreement of this date		$5,051 30
		Deduct amount of abatement	$2,024 00	
		And int. from Jan'y 8th, 1858	1,647 87	
				3,671 87
		Leaving true am't due Lawson		1,379 43
1882.				
June	9th.	Am't of Floyd's note paid Johnston		1,395 00

Amounts Received and Chargeable to Lawson.

1873.				
Sep. 21.	Am't rec'd from J. A. Sidebottom			153
" "	" " J. A. Nighbert			450
1874.				
July 10.	" " Johnston			1,500
July 21.	" " do.			2,684
1876.				
June 20.	" " L. Justice			719 25
1881.				
Feb. 19.	" by Johnston from Chilton, com'r			99 50
July 7.	" U. S. marshal's fees paid by Johnston			32 20
Nov. 19.	" paid by Floyd to Johnson			834 75
" "	" commissions of Com'r Chilton on same			65 25
1882.				
May 10.	" paid by Johnston to Payne for making deed per order cir. c't			5 00
" "	" " to Johnston by Chilton, com'r (Ricketts)			429 00
" 12.	" " " " " (Jno. Chafin)			109 25
" 17.	" " " " " (White, Nighbert & Avis)			175 25
336				
1882.				
May 29.	Am't Comm'r Chilton's commissions			$47 75
Sept. 9.	" paid Johnston by Com'r Chilton			100 00
1883.				
May 31.	" " " " " "			53 00
Oct. 29.	" " " " " "			44 85
" "	" " Chilton's com'ns on $103			5 15
1882.				
June 9.	" Com'r Chilton's commissions on Floyd's note for $1,395			69 75
M'ch 30.	" paid by Com'r Chilton for advertising sales			54 75
1883.	Am't of Com'r Chilton's com'ns on proceeds of sales yet uncollected			131 13
	Total charged to Lawson			$7,762 83

Statement of Lawson's Account.

1871.				
Aug. 3.	Am't due Lawson, as per agreement of this date			$5,051 30
1858.				
Jan'y 8.	Am't of abatement in Floyd's favor, as per decree	$2,024 00		
1871.				
Aug. 3.	Int. on same to this date	1,647 87		
			3,671 87	
" "	Bal. due Lawson			1,379 43
1873.				
Sept. 21.	Int. on bal. to this date			100 64
" "	Am't due Lawson			1,480 07
" "	By am't from J. A. Sidebottom	153 00		
" "	" " " J. A. Nighbert	450 00		
			603 00	
" "	Bal. due Lawson			867 07

1874.				
July 10.		Int. on balance to date		41 76
" "		Total due Lawson		$908 83
" "		By am't paid Lawson by Johnson	1,500 00	
" "		Deduct am't due Lawson	908 83	
" "		Bal. due Floyd	591 17	
" "		Int. on bal. to June 9, 1882	280 71	
" "		By am't paid by Johnson to Lawson	2,684 00	
		Int. on last payment to June 9, 1882	1,269 53	
1876.				
June 20.		By am't paid Lawson by L. Justice	719 25	
		Int. on last payment to June 9, 1882	259 51	
1881.				
Feb'y 19.		By am't paid Johnson by Com'r Chilton	99 50	
		Int. to June 9, 1882	7 83	
337				
July 7.		By am't fees paid U. S. marshal by Johnson	32 20	
		Int. to June 9, 1882	1 77	
Nov. 19.		By am't paid Johnson by Floyd (gross)	900 00	
		Int. to June 9, 1882	27 30	
1882.				
May 10.		By am't paid by Johnson to Payne for deed	5	
		" " " Johnston by Chilton	429	
			434 00	
		Int. to June 9, '82 on $434 (last am't)	2 17	
May 12.		By am't paid Johnston by Chilton	109 25	
		Int. to June 9, '82	50	
" 17.		By am't paid by Chilton to Johnston	223	
		Int. to June 9, 1882	45	
June 9.		Total due Floyd	7,642 14	
" "		To am't of Floyd's note paid by Lawson	1,395 00	
		Bal. due Floyd	6,247 14	
		Int. on bal. to Nov. 1, 1883	522 67	
Sept. 9.		By payment through Com'r Chilton	100 00	
		Int. to Nov'r 1, 1883	6 86	
1883.				
May 31.		By payment through Com'r Chilton	53 00	
		Int. to Nov'r 1, 1883	1 59	
Oct. 29.		By payment through Com'r Chilton	44 85	
" "		" Com'r Chilton's commissions on $103	5 15	
		Int. on last two am'ts to Nov'r 1, '83	15	
Nov'r 1.		Total due Floyd	$6,981 41	
" "		By am't of Chilton's commissions on proceeds of sales uncollected to this date	131 13	
" "		Am't due Floyd from Lawson	$7,112 54	

Summary.

Am't due Floyd from Lawson		$7,112 54
" " Johnson from Floyd	3,437 26	
" " & uncollected from sales, net	2,691 03	
		746 23
Bal. to credit of Floyd		$6,366 31

338 Having now complied with the requirements of the aforesaid order of reference, this report is respectfully submitted.

JOSEPH RUFFNER,
Special Master in Chancery.

To which report the following exceptions were filed by defendant Lawson:

339 GEORGE R. C. FLOYD
vs.
ANTHONY LAWSON *et al.* } In Equity.

The defendant, Anthony Lawson, in the above-entitled cause now comes and makes exceptions to the report of Joseph Ruffner, the special master commissioner appointed by the court in this cause, and to whom the cause was referred to take and state an account between the plaintiff and defendant Lawson, and between the plaintiff and defendant John W. Johnston, by a decretal order of this court, made on the 28th day of May, 1883, and which report, made under and in pursuance of said order, bears date the 7th day of November, 1883, which exceptions are as follows, to wit:

1st. For that the said master, in his statement of the debt due from the complainant Floyd to the defendant Lawson, found on page 10 of his said report, headed "Lawson Debt," has stated the amount so due on the 3d day of August, 1871, at $1,379.43, whereas he should have stated the amount so due at said date at $5,051.30, as then settled and agreed upon by the parties themselves.

2nd. For that the said master, in making up the account of charges against the defendant Lawson in favor of the complainant Floyd, on the same page 10 of his said report, has erroneously and improperly charged the said Lawson with the following sums of money, to wit:

340

1st.	Amount rec'd by said Lawson from Johnston (John W., defendant in this suit)	$1,500	
2nd.	Amount rec'd from same	2,684	
3rd.	Amount received by said Johnston from Commissioner Chilton		99 50
4th.	Fees of U. S. marshal, paid by said Johnston		32 20
5th.	Amount paid by Floyd (complainant) to said Johnston		834 75
6th.	" commissions of Commissioner Chilton on same		65 25
7th.	" paid by said Johnston to Payne (James M.) for making deed, per order of cir. c't.		5 00
8th.	" paid to said Johnston by Commissioner Chilton (Richets)		429 00
9th.	" paid to same by same (Jno. Chafin)		109 25
10th.	" paid to same by same (White, Nighbert, & Avis)		175 25
11th.	" Commissioner Chilton's commissions		47 75
12th.	" paid said Johnston by Com'r Chilton		100 00
13th.	" " " " " " "		53 00
14th.	" " " " " " "		44 85
15th.	" Chilton's commissions on $103		5 15
16th.	" Commissioner Chilton's commissions on Floyd's note for $1,395		69 75

17th.	Amount paid by Commissioner Chilten for advertising sales		54 75
18th.	" Com'r Chilton's commissions on proceeds of sales yet uncollected		131 13

Whereas the said master should not have charged the said several sums of money or either of them to or against the said defendant Lawson.

3rd. For that the said master, in making up the account
341 found on pages 11 and 12 of his said report, headed "Statement of Lawson's Account," has again erroneously and improperly stated the amount due from the complainant Floyd to the defendant Lawson, on the 3d day of August, 1871, at $1,379.43, whereas he should have stated the account so due at said date at $5,051.30, as then settled and agreed upon by the parties themselves.

4th. For that the said master has made up his said statements of the accounts between the complainant Floyd and the defendant Lawson, throughout, on the basis that the amount due from said complainant to said defendant on the said 3d day of August, 1871, was only $1,379.43, whereas he should have made up said statements of said accounts on the basis that the amount so due from said complainant to said defendant at said date was $5,051.30, as then agreed upon between the parties themselves.

5th. For that the said master has in his said statement, found on pages 11 and 12 of his said report, head- "Statement of Lawson's Account," erroneously and improperly charged the said Lawson, in favor of the complainant Floyd, with the following sums of money, to wit:

1st.	Amount paid by defendant Johnston to said Lawson July 10th, 1874	$1,500	
2nd.	" interest on $591.17 to June 9th, 1882	280	71
3rd.	Amount paid by said Johnston to said Lawson	2,684	00
4th.	Amount interest on same to June 9th, 1882.	1,269	53
342 5th.	Amount interest on $719.25, paid by L. Justice to Lawson	259	51
6th.	Amount paid by Com'r Chilton to said Johnston	99	50
7th.	" interest on same	7	83
8th.	" fees paid U. S. marshall by said Johnston	32	20
9th.	" interest on same	1	77
10th.	" paid Johnston by Floyd (gross)	900	00
10½.	" interest on same	27	30
11th.	" paid to Johnston by Floyd (for deed)	5	00
12th.	" paid to Johnston by Chilton	429	00
13th.	" interest on said last two items (434.00)	2	17
14th.	" paid to Johnston by Chilton	109	25
15th.	" interest on same		50
16th.	" paid to Johnston by Chilton	223	00
17th.	" interest on same		45

18th.	Amount	payment through Commissioner Chilton (not stated to whom, but in fact to Johnston)	100 00
19th.	"	interest on same	6 86
20th.	"	payment through Commissioner Chilton (not stated to whom, as before)	53 00
21st.	"	interest on same	1 59
22nd.	"	payment through Commissioner Chilton (not stated to whom, as before)	44 85
23rd.	"	commissions of Chilton, commissioner, on $103	5 15
24th.	"	interest on last 2 amounts	15
25th.	"	Chilton's commissions on proceeds of sale, uncollected	131 13

Whereas the said master should not have charged to or against the said defendant Lawson the said sums of money or either
343 of them.

6th. For that the said master, at the foot of his said last-named statement, on page 12 of his said report, erroneously and improperly finds and states that there is due from the defendant Lawson to the plaintiff Floyd the sum of $7,112.54, whereas upon the pleadings and proofs in the cause, upon the merits thereof, he should have found and reported that there was nothing due from said defendant to said complainant whatever, but, on the contrary thereof, there was due from said complainant to the said defendant a large sum of money, to wit, $3,000.00, at the least.

7th. And for that the said master, even upon the basis adopted by him, and upon which he has stated said accounts as aforesaid, has erroneously and improperly found and stated that there is due from the said defendant Lawson to the complainant Floyd the sum of $7,112.54, whereas there is no such sum due the complainant from said defendant in any view of this case, and the said sum so stated is excessive, even on the basis so adopted by said master, by several thousand dollars.

Wherefore the said defendant, Anthony Lawson, excepts to said report and prays the judgment of the court thereon.

JAMES H. FERGUSON,
Solicitor for Defendant Lawson.

344 And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston on the 15th day of November, 1883:

This cause came on this day to be heard upon the report of Special Commissioner Joseph Ruffner, filed herein on a former day of the present term of this court, and upon the exceptions thereto filed by the defendant Lawson, and was argued by counsel; on consideration whereof the court is of opinion to and doth overrule each and all of said exceptions and doth approve and confirm said report.

And now, at this day, to wit, at a district court of the United States for the district aforesaid, held at Charleston on the day and date first hereinbefore written, to wit, on the 26th day of November, 1883:

Special Master Commissioner Joseph Ruffner this day filed his amended and supplemental report in this cause in pursuance of a former decree herein rendered at this term; to which report defendant, Anthony Lawson, now files exceptions, and the same are set down for argument, and the said exceptions being argued by counsel and considered by the court, it is adjudged, ordered, and decreed that the said exceptions to said amended and supple-
345 mental report and each of them be, and the same are, overruled, and that the said report be, and the same is, in all things approved and confirmed; and this cause now coming on this 26th day of November, 1883, for a final hearing and being argued by counsel, and it appearing to the court by the said amended and supplemental report that there was due and owing from the defendant, Anthony Lawson, to the complainant, George R. C. Floyd, on the 1st day of November, 1883, including principle and interest, the sum of five thousand and forty-six dollars and forty cents ($5,046.40): It is therefore adjudged, ordered, and decreed that the said defendant, Anthony Lawson, do pay to the said complainant, George R. C. Floyd, or to his counsel, C. C. Watts, Esq., for him, the said, sum of $5,046.40, with interest thereon from the said 1st day of November, 1883, till paid; and it is further adjudged, ordered, and decreed that the said defendant, Anthony Lawson, within ninety days from the rising of the court, do make, execute, acknowledge, and deliver to said complainant, George R. C. Floyd, an apt and sufficient deed of conveyance of the land and lots in the said contracts A & B, mentioned & set out, but as modified by the decree of the 18th of November, 1882, and as shown by the map & report of sur-
346 veyor, John L. Cole, heretofore filed in this cause, which said land & lots, as shown by said map & report of said surveyor, John L. Cole, are embraced by the figures 1, 2, 3, 4, 5, 6, 7, 8, & thence to figure 20; thence from figure 20 to figure 47, & from figure 47 to figure 25, & thence from figure 25, in order, to figure 46, and to the beginning, figure 1, and containing 632 acres, exclusive of the lots in said boundaries; and it is further adjudged, ordered, and decreed that if the said defendant Lawson should fail, neglect, or refuse to execute & deliver such deed as aforesaid, then that J. W. Kennedy, who is hereby appointed a special commissioner for that purpose, do for & in the name & behalf of defendant Lawson make, execute, acknowledge, and deliver for record such deed embracing the boundaries aforesaid, for which the said commissioner shall be allowed a fee of ten dollars, to be taxed in the costs of this cause; and it is further adjudged, ordered, and decreed that said defendant, Anthony Lawson, do pay the costs of this suit.

And on motion of the said defendant, Anthony Lawson, who desires to appeal from the judgment and decrees of the court herein, an appeal is allowed him from said judgment and decrees to the Supreme Court of the United States upon his entering into bond,

with good security, in the penalty of $10,000, conditioned
347 according to law; and thereupon the said defendant, Anthony Lawson, together with James A. Nighbert, his security, entered into and acknowledged a bond in the penalty and with the condition herein required, and the said security being satisfactory to the court said bond is approved, and the court certifies that the sum and value of the matter in controversy in this suit, exclusive of costs, is of greater amount and value than five thousand dollars.

The amended and supplemental report of Joseph Ruffner, commissioner, filed by the decree last aforesaid, is in the words and figures following, to wit:

348 U. S. Dist. C't, D. W. Va. In Chancery.

G. R. C. FLOYD *v.* A. LAWSON & *als.*

To Hon. John J. Jackson, judge of said court:

On a former day of the present term of your honor's court I filed a report in this cause by which it appeared that the amount due from A. Lawson to G. R. C. Floyd was the sum of $7,112.54. Since filing said report I have made a careful revision of the same and have discovered that there is an error in the amount so charged Lawson. The real amount chargeable to Lawson is $5,046.40. The error results from charging Lawson, in addition to the amount paid him by Johnson, with the amounts paid by Floyd to Johnson to reimburse Johnson for the amounts paid by him to Lawson—thus in effect twice charging Lawson.

I have made a statement in accordance with this corrected view, which I return herewith, which shows the true statement of the account between Floyd & Lawson. The error aforesaid extends only to this account and the summary, which is also corrected at the foot of the following statement:

349 *Lawson in Acc't with Floyd.*

1871, Aug.	3.	Am't due Lawson, per agreement of this date		$5,051 30
1858, July	8.	" of abatement in Floyd's favor, as p'r decree	$2,024 00	
1871, Aug.	3.	Int. to this date	1,647 87	
				3,671 87
" " "		Bal. due Lawson this date		1,379 43
1873, Sept.	21.	Int. on bal. to this date		100 64
" " "		Total due Lawson this date		1,480 07
" " "		By am't from Sidebottom	153 00	
" " "		" " Nighbut	450 00	
				603 00
" " "		Bal. due Lawson this date		867 07
1874, July	10.	Int. on bal. to this date		41 76
" " "		Total due Lawson this date		908 83
" " "		By am't paid Lawson by Johnson	1,500 00	
" " "		Deduct am't due Lawson	908 83	
" " "		Bal. due Floyd this date	591 17	
		Int. on bal. to June 9, 1882		280 71
" July	21.	By am't paid by Johnson to Lawson	2,684 00	
		Int. on same to June 9, 1882		1,269 53

1876, June 20.	By am't paid Lawson by L. Justice	719 25		
	Int. on same to June 9, 1882			259 51
1881, July 7.	By fees paid U. S. marshal by Johnson	32 20		
	Int. on same to June 9, 1882			1 77
" Nov. 19.	By Chilton's comm'n on $900 paid to Johnson.	65 25		
	Int. on same to June 9, 1882			2 17
1882, May 10.	By am't paid Payne by Johnson for deed	5 00		
	Int. on same to June 9, 1882			02
" " 17.	By Chilton's comm'n on am'ts paid by him to Johnson	47 75		
	Int. on same to June 9, 1882			42
	Forward	$4,144 62		1,814 13
350	Bro't forward—principal	$4,144 62		
	Bro't forward—interest			$1,814 13
1882, June 9.	To am't of Floyd's note paid by Lawson			1,395 00
" " "	Bal. interest due Floyd			419 13
1883, Nov. 1.	By int. on principal from June 9, 1882			346 37
" " "	" Chilton's comm'ns on $103 paid Johnson	5 15		
" " "	" am't of Chilton's commissions on proceeds of sales uncollected to this date	131 13		
" " "	Principal due Floyd	$4,280 90		$765 50
" " "	Interest due	765 50		
	Total due Floyd to date	$5,046 40		

SUMMARY.

Am't due Floyd from Lawson		$5,046 40
" " Johnson " Floyd	$3,437 26	
" " uncollected from sales—net	2,691 03	
		746 23
		$4,300 17

Respectfully submitted.

JOSEPH RUFFNER,
Sp'l Master in Ch'y.

351 The exceptions to the foregoing report filed by the defendant, Anthony Lawson, are in the words and figures following, to wit:

GEORGE R. C. FLOYD
vs.
ANTHONY LAWSON *et al.* } In Equity.

The defendant, Anthony Lawson, in the above-entitled cause now comes and makes exceptions to the amended and supplemental report of Special Master Commissioner Joseph Ruffner filed in this cause, which exceptions are as follows:

1st. For that the said master in his statement of the account contained in said amended and supplemental report, commencing with the words "Lawson in acc't with Floyd," erroneously finds and states the amount due from Floyd to Lawson under the agreement of August 3rd, 1871, at $1,379.43, whereas he should have found and stated that the amount due from Floyd, the complainant, to Lawson, defendant, at said date was $5,051.30, as then settled and agreed upon between the parties themselves.

2nd. For that the said master in his said last-named statement has erroneously credited the said sum of $5,051.30 so due from the complainant Floyd to the defendant Lawson under the said agreement of August 3d, 1871, with the sum of $3,671.87, principle and interest, as of the date of said agreement, whereas he should
352 not have credited the said sum of $5,051.30, with the said sum of $3,671.87, or any other sum, as of said date.

3rd. For that the said master in said statement of said last-named account has erroneously and improperly charged the complainant Floyd with interest on the said sum of $1,379.43, mentioned in the first exception, from the 3rd day of August, 1871, to the 21st day of September, 1873, whereas he should have charged the said Floyd with interest on the said sum of $5,051.30 during the said period.

4th. For that the said master in his said statement of said last-named account has erroneously found and stated the amount due from the complainant Floyd to the defendant Lawson on the 21st day of September, 1873, at $1,480.07, whereas he should have found and stated that the amount then due from the complainant to said defendant was $5,051.30, with the interest thereon from August 3rd, 1871, to September 21st, 1873, added.

5th. For that the said master in his said last-named account has erroneously found and stated that the amount due from the complainant Floyd to the defendant Lawson prior to the credit given to the complainant on the 10th day of July, 1874, was only $908.83, whereas he should have found and stated that the amount then due from the complainant Floyd to the defendant Lawson
353 was a much larger sum, to wit, $5,500.00 at the least.

6th. For that the said master in his said last-named account has erroneously found and stated that there was due from the defendant Lawson to the complainant, Floyd, on the 10th day of July, 1874, the sum of $591.17, whereas he should have found and stated that there was then due and owing from the complainant, Floyd, to the defendant Lawson a large sum of money, to wit, $5,500.00 at the least.

7th. For that the said master in his said last-named statement of said account has erroneously and improperly charged the said defendant, Anthony Lawson, in favor of the complainant, Floyd, with the following sums of money, to wit:

Amount paid by Johnson to Lawson	$1,500	00
" interest on $591.17 (part of said sum)	280	71
" paid by Johnson to Lawson	$2,684	00
" interest on same	1,269	53
" interest on principle from June 9th, 1882	346	37

Whereas the said master should not have charged to or against the defendant Lawson in favor of the complainant, Floyd, in said last-named statement of account the said several sums of money or any or either of them.

8th. For that the said master in his said last-named state-
354 ment of said account finds and states that there is due to the complainant, Floyd, from the defendant Lawson, Nov. 1st,

1883, the sum of $5,046.40, whereas on the pleading and proofs in the cause on its merits there was due on that day from the said complainant to said defendant Lawson a large sum of money, to wit, $3,000.00 at the least, and the said master should have so found and stated.

9th. And for that the said master in his said statement of said last-named statement of account has erroneously found and stated that there was, on the 1st day of November, 1883, due to the complainant, Floyd, to the defendant Lawson the sum of $5,046.40, whereas, even upon the basis adopted by the said master in stating said account there was and is no such sum due from said defendant to said complainant, and the amount so found to be due is largely in excess of the amount due from the defendant to the complainant upon the basis so adopted by the said master, such excess being $4,000.00 at the least.

And the defendant Lawson rely upon his exceptions to the original report of said master, as also exceptions to the said amended and supplemental report, so far as they are applicable to said last-named report; wherefore the defendant, Anthony Lawson, excepts to the said amended and supplemental report of said master and prays the judgement of the court therein.

JAMES H. FERGUSON,
Solicitor for Def't Lawson.

355 The appeal bond referred to in the last-aforesaid decree is in the following words and figures, to wit:

Appeal Bond.

Know all men by these presents that we, Anthony Lawson and James A. Nighbert, are held and firmly bound unto George R. C. Floyd in the just and full sum of ten thousand (10,000) dollars; to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally and firmly, by these presents.

Sealed with our seals and dated this 26th day of November, 1883.

The condition of the above obligation is such that whereas lately, at a district court of the United States for the district of West Virginia, holden at Charleston, in a suit pending in said court between George R. C. Floyd and Anthony Lawson, certain decrees were rendered against the said Anthony Lawson, and the said Anthony Lawson having obtained from said district court an appeal from said decrees to the Supreme Court of the United States, upon his entering into bond, with good security, in the penalty of ten thousand dollars:

Now, therefore, if the said Anthony Lawson shall prosecute his said appeal to effect and answer all damages and costs if he should fail to make good his plea, then this obligation to be void; else to remain in full force.

ANTHONY LAWSON. [SEAL.]
JAMES A. NIGHBERT. [SEAL.]

Acknowledged before me and approved.
J. J. JACKSON, *Judge, &c.*

356 I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, certify that the foregoing is a true and complete transcript of the record in the chancery cause lately pending in my said court, at Charleston, in said district, wherein George R. C. Floyd was complainant and Anthony Lawson and others were defendants, in so far as the same pertains to the controversy between the said George R. C. Floyd and the said Anthony Lawson.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my said court, at Charleston, this — day of ——, A. D. 1884.

{Seal District Court United States, District West Virginia, Charleston, West Va.}

JASPER Y. MOORE,
Clerk Dist. C't U. S., Dist. W. V.

357 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the district court of the United States for the district of West Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between George R. C. Floyd and Anthony Lawson, a manifest error hath appeared, to the great damage of the said Anthony Lawson, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

358 Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this 3rd day of September, in the year of our Lord one thousand eight hundred and eighty-four.

{Seal District Court United States, District West Virginia, Charleston, West Va.}

Teste: JASPER Y. MOORE,
Clerk of the District Court of the United States for Dist. West Va.

Fee of clerk of dist. c't U. S. for this record, $147.50.

359 ANTHONY LAWSON vs. GEORGE R. C. FLOYD. } In Error.

Of October term, in the year of our Lord one thousand eight hundred and eighty-four.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Anthony Lawson, by James H. Ferguson, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by said record it appears that the judgements and decrees aforesaid, including said final judgement and decree, were given and rendered for the said George R. C. Floyd against the said Anthony Lawson, whereas by the law of the land the said judgements and decrees and each of them ought to have been given and rendered for the said Anthony Lawson against the said George R. C. Floyd, and the said Anthony Lawson prays that the judgements and decrees aforesaid and each of them be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of said judgements & decrees.

JAMES H. FERGUSON,
Att'y for Pl'ff in Error.

Endorsed on cover: West Virginia C. C. U. S. No. 405. Anthony Lawson, appellant, *vs.* George R. C. Floyd. Filed 17th October, 1884.

24-108
24-108

IN THE

Supreme Court of the United States.

ANTHONY LAWSON, APPELLANT,

vs.

GEORGE R. C. FLOYD, APPELLEE.

The deposition of the plaintiff, George R. C. Floyd, in this cause, not being in the record of the case, and the same being lost, it is hereby agreed by and between the parties, as follows:

1st. That so much of the evidence of the said Floyd as appears by the reports made by Master Commissioner Peter Fontaine, in this cause, shall be taken and considered by this court, on this appeal, to the same extent as if said deposition of said Floyd had been copied into said record.

2d. It is further agreed, the said Floyd, in said deposition in this cause, testified to the following: That he was very slightly acquainted with the Logan lands, at the time of the contract of 1857; that he had never been over them with a view of ascertaining the quantity or boundary or quality of the same; and that he did not know the same; that he relied on the representations and statements of said Lawson, in that behalf, in making said trade with him; that said Lawson always told him that said tract contained 1,000 acres, and so put it in the title-bond; that he always had the greatest confidence

in said Lawson, and relied implicitly on what he stated and represented, as to the quantity of said land; (and that he traded for said land with the belief that it did contain 1,000 acres;) that it was a sale by the acre and not a sale in gross.

That on actual survey he found it to contain only 592 acres; that he regarded the Waterford tract cheap at the price said Lawson gave for it, and so with the Smith tract.

Question by Plaintiff's Attorney: Upon what did you rely in making the trade mentioned in said contract?

Answer: Upon the representations of Mr. Lawson.

Question by same: State whether said sale was a sale in gross or a sale by the acre, or quantity?

Answer: It was a sale by the acre.

Question by same: What representations were made to you by Defendant Lawson, as to the number of acres in your whole purchase?

Answer: He always told me there was one thousand acres, and so put it in the title-bond.

And it is agreed that the deposition of said Floyd was the first taken in the cause; that he never gave but the one deposition, and that the above is the whole of his evidence as to his knowledge of the Logan lands, and as to the representations and statements of the defendant, Lawson, to him, in reference to the quantity of said lands.

It is further agreed that the said Floyd, in reply to questions asked him by the defendant's attorney, testified in his said deposition, as follows:

That he received the following sums of money for lands, lots and timber, sold by him from the said Logan lands, to-wit:

From Urias Buskirk, for lots 11 and 12	$ 700 00
For a small lot, sold to John Buskirk	50 00
For 50 acres, sold to Isaac Morgan	800 00
For timber sold from said land	800 00
	$2,350 00

And it is agreed that the substance of the whole of the evidence of the said Floyd, relative to the questions in dispute in this appeal, are found in the reports of Master Commissioner Fontaine and in this agreement; and that all of the said evidence shall be taken and considered by the court, and is to have the same force and effect as if said deposition of said Floyd had been copied in the record of this case, and the same were read therefrom.

It is also agreed, that on the 28th day of May, 1883, a decree was made and entered in this cause, which is not found in the printed record, which decree is hereto annexed, marked "Exhibit A," and which decree is to be taken and considered as a part of the record on this appeal.

But this agreement and stipulation are made subject to the following conditions; that is to say,—

1st. The same are not to be taken and used for the purpose of delaying the hearing of this cause, at this term, or to give either the appellant or the appellee any other or higher right, so far as urging or insisting on a hearing or continuance of the cause may be concerned, than he might otherwise have.

2d. If this cause is not heard at the present term, then this agreement and stipulation shall be treated as though the same had never been made.

Dated December 16th, 1887.

JAMES H. FERGUSON,
Attorney for Appellant.

C. C. WATTS,
Attorney for Appellee.

"EXHIBIT A," referred to in the Agreement of Counsel, dated December 16, 1887.

At a District Court of the United States, for the District of West Virginia, holden at Charleston on the 28th day of May, 1883:

Among the proceedings had was the following, to-wit:

GEO. R. C. FLOYD,
vs.
ANTHONY LAWSON, AND ALS., } In Chancery.

This cause came on this day to be heard and was argued by counsel. Upon consideration of which, the court is of opinion and doth decide to refuse and deny the application and petition for a re-hearing and review of this cause and of the decrees aforesaid, heretofore prayed for by the defendant, Lawson, and the court doth further decide and sustain the motion of the complainant, Floyd, to strike from this cause the cross-bill heretofore filed by the defendant, Lawson, in the clerk's office of this court, on the 14th day of July, 1882, and the same is accordingly done and held for naught, and the court, further considering the report of Master Commissioner Fontaine, filed in this cause on the 5th day of May, 1883, and the exceptions filed thereto, doth decide to confirm so much of said report and its findings as to the amount to which the complainant, Floyd, is entitled, by way of abatement of purchase-money, by reason of the deficiency in the quantity of land, as heretofore decreed, of 368 acres, to be $5,100.48, as of the 5th day of May, 1883, and doth sustain all the exceptions to said report filed by complainant, Floyd, and doth overrule the exceptions filed by the defendant, Lawson, to the said report, except so far as the costs of John

L. Cole, surveyor, heretofore appointed, have been settled by a former order herein. And it appearing to the court, from the proceedings heretofore had in this cause other than what has been adjudicated herein by this decree, that there are certain rights, equities, payments and other matters to be adjusted by and between the parties to this suit, arising under the contract of the 3d day of August, 1871, and sales of lands made under the same by said complainant, Floyd, and by James M. Payne, Agent, and Joseph E. Chilton, Special Commissioner, in this cause, it is ordered that this cause be referred to Master Jos. Ruffner, to enquire and report into the matters aforesaid, arising under said contract, the sales made as aforesaid under the same, and affecting the rights of the complainant, Floyd, the defendants, Lawson and John W. Johnston, the amounts realized and applied by anyone in the whole subject matter, to whom and on what account, and to report any other matters which the parties or any of them may require or the said Master may deem pertinent. And, thereupon, John M. Preston, trustee of Sally B. Preston, and the said Sally B. Preston, by her next friend, Charles H. C. Preston, this day, by counsel, tendered their petition in the aforesaid chancery suit, and moved the court to file the same. Objection being made by the defendants to the filing of the said petition, the court takes time to consider of the same.

A Copy—Teste: JASPER Y. MOORE, Clerk,
Dis. Ct. U. S., D. W. Va.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

ANTHONY LAWSON, APPELLANT,

vs.

GEORGE R. C. FLOYD, APPELLEE.

BRIEF FOR APPELLANT AND PLAINTIFF IN ERROR.

JAMES H. FERGUSON,
Of Counsel.

W. L. MOORE, PR., CHARLESTON, W. VA.

Supreme Court of the United States,

October Term, 1886.—No. 405.

ANTHONY LAWSON, APPELLANT,

vs.

GEORGE R. C. FLOYD, APPELLEE.

BRIEF FOR APPELLANT.

Statement of the Case.

On the 2d day of December, 1857, a contract in writing was entered into between the said Floyd and Lawson, as follows:

"Memorandum of an agreement, made this 2d day of December, 1857, between George R. C. Floyd, of the one part, and Anthony Lawson, of the other part, witnesseth: That the said Floyd has sold to the said Lawson, for twenty-six thousand dollars, two several tracts of land, lying in the west end of Burke's Garden, in the county of Tazewell, one known as the Waterford place and supposed to contain eight hundred and two acres, and the other known as the Smith place, adjoining the other, and supposed to contain four hundred and sixty seven acres; the title to the Waterford place is in John B. Floyd; and the said Geo. R. C. Floyd binds himself to procure a deed therefor to the said Lawson with general warranty and relinquishment of dower, and the title to the Smith place is in one Ballard P. Smith.

who will make a deed therefor, with general warranty and relinquishment of dower, upon the payment of the purchase-money hereinafter named; and the said Floyd is to deliver possession of said tracts of land at once; and the said Lawson, for the said tracts of land, binds himself to pay as follows, viz: To Ballard P. Smith, the amount for which said Smith place sold for under a decree of the circuit court of Washington county, which is supposed to be $8,410, but if that is not the correct sum it is to be ascertained, and to pay to A. S. Gray the sum of $9,850, which may be paid in three installments of $3,283.33 each — one due January 1st, 1859; one due January 1st, 1860, and the other due January 1st, 1861, each bearing interest from January 1st, 1858; and also to convey to the said Floyd the property of said Lawson at Logan Court-House, consisting of five half-acre lots, viz: Nos. 8, 9, 10, 11 and 12 in the original plan of the town of Lawnsville, now Aracoma, and about 1,000 acres of land lying on the east side of Guyandotte and north of Aracoma; being all the lands owned by said Lawson below or north of Kezees' branch, lying back of lots Nos. 6 and 7 and below the public square, and down as far as McDonald's land; and the said Lawson puts the property at ten thousand dollars, and the said Lawson is to make the said Floyd a deed, with general warranty and relinquishment of dower, to the above-described property, except one recent grant and part of another tract lying back from the river, which he is only to convey specially, and the said Lawson is to deliver possession of the lands and lots by 1st March next, except the store-house and dwelling-house, and — of them by the 1st of May next; and whereas the above payment to Gray & Smith and the above property at $10,000 makes more than the sum of $26,000, which the two tracts of land in the garden are rated at, it is agreed that the difference, whatever it may be, between six thousand dollars and the sum necessary to be paid to Smith, shall be due from said Floyd to the said Lawson, to be paid when said Lawson delivers possession of the lands, lots, &c., at Aracoma, and the said Lawson has the

privilege of retaining the title to the lands to be conveyed by him till the said balance is paid.

" Witness the following signatures and seals.

"GEO. R. C. FLOYD, [SEAL.]
"A. LAWSON, [SEAL.]"

See "Exhibit A," Printed Record, p. 14.

At the date of said agreement, the said Floyd had no interest whatever in the said " Waterford place," and the only interest he had to the " Smith place" was contingent upon the payment of the purchase money therefor, in pursuance of his purchase thereof at a judicial sale.

As to the " Waterford place," he acted as the agent of his brother, John B. Floyd, the owner thereof, as will more fully appear hereafter.

The sum due from Floyd for the Smith place was $8,667.50, instead of $8,410, as stated in said contract, and the same was paid by Lawson to Smith, and a deed of conveyance was executed to Lawson by Smith and wife in pursuance of said agreement.

By this payment to Smith, Floyd became indebted to Lawson in the sum of $2,667.50, which, by the terms of said agreement, became a lien on the real estate sold by Lawson to Floyd, for its payment.

Floyd took possession of said real estate under said agreement, as therein provided for, and held and occupied the same until after the close of the late war, without paying either principal or interest, or any part thereof of said sum of money, and about the year 1866, the said Lawson commenced a suit in equity in the circuit court of Logan county, West Virginia, to enforce his vendor's lien on the real estate sold by him to Floyd, as stated in said agreement, which suit was compromised and settled by an agreement in writing, dated August 3d, 1871, as follows:

" This contract, made this 3d day of August, 1871, between

Anthony Lawson, Geo. R. C. Floyd, and John W. Johnston, witnesseth: That whereas a certain suit is pending in the circuit court of Logan county, West Virginia, in which Anthony Lawson is plaintiff, and said Floyd and Johnston and others, defendants, touching a balance of purchase-money claimed by said Lawson for a tract of land near Logan Court-House: Now, therefore, the said suit is to be dismissed at the next term of the court, each party paying his own costs, and all matters in said suit are settled on the following terms, viz: a note executed by A. Lawson to Geo. R. C. Floyd, which was filed by said Floyd as an offset against said Lawson in the said suit, is to be credited with the sum of two thousand, seven hundred and sixty dollars, as of the date of June 30th, 1858, being the amount, principal and interest, at that date, of the legacies given by the will of Mrs. Letitia Floyd to Letty P. Lewis and Nicketie P. Johnston, which legacies were paid by said Lawson, the said payments so made being hereby ratified by said Floyd; and it is further agreed that said Johnston shall assume and he does hereby assume and bind himself to pay to Anthony Lawson the balance of said purchase-money, amounting, principal and interest, at this date, to $4,851.30, and the costs of said suit, estimated to be $200.00, making in all five thousand and fifty-one dollars and thirty cents, as foliows, viz: one-third on or before the first day of January, 1873; one-third on or before the first day of January, 1874, and one-third on or before the first day of January, 1875, all bearing interest at six per cent. per annum from this date; and it is further agreed that said Lawson and said Floyd shall each, and they do hereby, bind themselves that the property and the control of the tract of land herein mentioned, sold by the said Lawson to said Floyd, estimated to contain 1,000 acres, shall be in said Johnston as an indemnity to him, which is described as follows, viz: All the land owned by said Lawson, lying below the Kezees branch above Aracoma, lying back of the lots Nos. 5, 6 and 7, in the original plan of the town of Lawnsville (now Aracoma), including the following town lots, as laid down in

said plan of the town of Lawnsville, viz: Nos. 8, 9, 10, 11 and 12; thence down the river to box-elders, at the lower end of said Lawson's land; thence with the division line between said Lawson's land and McDonald's land; thence up the point of the ridge below the sugar camp hollow to the back line of said Lawson's land; thence with the back line to said Kezees branch, and thence down the same to the beginning; but the said Lawson is to retain the legal title to said lands and lots as a security for the payment of the said purchase-money, except the land and lots sold to Isaac Morgan and John and Urias Buskirk; and it is further agreed that said portions of said land as may be sold by said Johnston or his agent, shall be conveyed by the said Lawson to the purchaser, upon the payment to him of the purchase-money of the said portion, and the balance of the land, if any, not sold by the said Johnston or his agent to third parties, is to be conveyed by the said Lawson to the said Floyd, when the said sum of $5,051.30 is paid, with its interest; and it is further agreed, that the portions of land sold by Geo. R. C. Floyd to Isaac Morgan, being about fifty acres, at the lower end of the tract, and Lots Nos. 11 and 12, in the original plan of the town of Lawnsville, now Aracoma, lying between the river and the present street, and extending down to the lower corner of the stable, and thence to the river, sold to Urias Buskirk, shall be ratified, and the legal title shall be conveyed by said Lawson to the said Morgan and to the said Buskirk, respectively, or to such persons as they shall in writing direct, whenever requested to do so by said Floyd. And the said Lawson shall convey all the old patent lands with general warranty, and the back lands with special warranty.

"Witness the following signatures and seals:

"A. LAWSON, [Seal.]
"GEO. R. C. FLOYD, [Seal.]
"JOHN W. JOHNSTON, [Seal.]"

See "Exhibit B," printed record, pp. 15, 16.

After the making of said last-named contract, the said Johnston appointed the said Floyd his agent to make sales of said land as contemplated by said agreement, and, as claimed by Floyd in his bill in this case, he sold, as such agent, several lots and parcels of said land, the purchase-money for which amounted to $5,160.00.

Floyd so conducted himself in the business of his agency as to displease his principal, and he was, for that reason, removed from his agency and James M. Payne, Esq., was appointed by Johnston in his place. After his appointment, the said Payne commenced suits in the Circuit Court of Logan county, West Virginia, for the specific execution of the contracts of sale which Floyd alleged he had made, as such agent; and pending these suits the said Floyd caused a survey of the said lands to be made, whereby, as he alleged, it was discovered that the Logan lands to be conveyed to him by said Lawson contained only 592 acres, instead of 1,000 acres.

And, thereupon, in the fall of 1877, he commenced this suit in the Circuit Court of Logan county, West Virginia, and on the application of the defendants, Lawson and Johnston, the same was removed into the District Court of the United States for the District of West Virginia, said Court having Circuit Court powers.

The plaintiff's bill is found on pages 1 to 9 of the printed record. Its material allegations, so far as they refer to the questions arising on this appeal are concerned, are as follows:

1. That at the date of the original contract (exhibit A), the plaintiff was wholly ignorant of the quantity of lands in Logan which the defendant, Lawson, was, by the contract, to convey to him, and that he relied entirely, as to that matter, upon the statements and representations of the defendant, Lawson, in whom he had implicit confidence. Printed record, pp. 5, 6.

2. That before and at the date of said contract, said Lawson "wilfully, knowingly and falsely represent unto this plain-

tiff that the said Logan lands contained 'about one thousand acres,' and thereby induced this plaintiff to enter into said contract for the Logan lands aforesaid, as set out in the agreement of the 2nd day of December, 1857; that the plaintiff would not have entered into said contract but for said representations so made as aforesaid by said Lawson." *Id.*

3. That "still not suspecting the truth of the aforesaid representations made by the said Lawson as aforesaid, touching the quantity of the Logan lands," he entered into the contract of August 3d, 1871, with the defendants, Lawson and Johnston.

4. That in the fall of 1875, the plaintiff had the said Logan lands surveyed, and found that they contained only 592 acres, instead of 1,000 acres, which fact he communicated to Lawson by letter, and asked him to account for the deficiency, which he failed to do. *Id.*, 6, 7.

The answer of the defendant, Lawson, to this bill, admits that the plaintiff was ignorant of the quantity of the Logan lands at the date of said contract, and avers that he, said Lawson, was also ignorant of the quantity of said lands at that time, and that he was still ignorant of the true quantity of said lands. *Id.*, p. 33.

And he, in the same connection, avers that at the time of the execution of the contract "he distinctly stated to the said plaintiff, in substance, that he did not know the quantity of land in the tract, and that he was unwilling to guarantee any particular quantity of acres in said tract, and hence it was that said land was described in the contract as containing 'about one thousand acres,' which was understood by both parties at the time, and by the defendant, Johnston, who drew the contract, not to bind this defendant to make good the said one thousand acres in case of any deficiency, and this defendant would not have signed the contract with any other understanding than this. And this defendant expressly avers and charges that said sale was a sale in gross and not

a sale by the acre, and that it was so understood by the plaintiff himself at and before the final execution of the said contract." *Id.*, pp. 33, 34.

Said answer further avers that the chief value of said tract of land, at the date of the contract, consisted of the town lots, with the buildings thereon, the bottom land, and the coal bank spoken of in the answer of the defendant, Johnston; that the back or mountain lands were of but little value, being steep, rough and rugged, so much so, in fact, that he, said Lawson, had never been over them, except to a limited extent, and that he knew of no one who had ever been over them, except to the same limited extent.

The answer then denies "each and every allegation of said bill which, directly or by implication, charges him" (the said Lawson) "with holding out any inducements or making any statements or representations to the said plaintiff as to the quantity of acres in the said tract of land, to induce him, the said plaintiff, to enter into the said contract, or otherwise; but on the contrary thereof, this defendant avers the fact to be, that the said contract for the sale of the said Tazewell lands to this defendant was first proposed by the said plaintiff to this defendant in the county of Tazewell, in the month of April, 1857," and that the plaintiff then proposed to take the Logan lands at $10,000.00, in part payment of the $26,000.00 for the Tazewell lands. *Id.*, p. 34.

The said answer also avers that John B. Floyd was the owner of the said "Waterford place" at and before the date of the said contract, and that the said plaintiff, in making said contract, and in all that he did in reference to it, acted as the agent of the said John B. Floyd; and that before making the said contract with the said plaintiff, the defendant, Lawson, visited the said John B. Floyd in Washington City, in reference to the proposed contract, and was told by him to go on and make the contract with the plaintiff and he would ratify it, "and convey the said 'Waterford place' to this defendant, which he afterwards did as agreed." *Id.*, pp. 34, 35.

And finally, so far as this matter is concerned, the answer denies expressly that the defendant, Lawson, "knowingly and falsely, or otherwise, represented to the plaintiff that the said Logan lands contained about one thousand acres, in any other way or manner, or in any other sense than is hereinbefore stated," and denies that the said Lawson, in any way whatever, "either by request, inducements, representations or otherwise, induced the said plaintiff to enter into said contract, but that, on the contrary thereof, the said contract was first proposed as aforesaid by the said plaintiff, and it was never thought of by this defendant until it was so proposed by the plaintiff, and this defendant would never for a moment have entertained it if the said plaintiff had refused to take his Logan lands." *Id.*, p. 36.

The answer denies all *personal* knowledge of the alleged deficiency in the quantity of the land, and denies that the plaintiff is entitled to any relief therefor, if it be true.

The Court will observe that the plaintiff does not aver in his bill that the sale of the Logan lands was, or was intended or understood to be, a sale by the acre, but that the sole ground for relief set up in his bill is the alleged false and fraudulent representations by the defendant, Lawson, as to the quantity of land contained in the tract.

And all of these allegations being denied by the said answer, it was incumbent upon the plaintiff to prove them by the measure of proof required in courts of equity.

Depositions were taken by both parties, and on the 23d day of November, 1881, a decree was made and entered by the court that the plaintiff was entitled to an abatement of the purchase-money set out in the contract of December 2d, 1857, by reason of the deficiency of 408 acres in the tract of 1,000 acres, and a reference was made to a master of the court to ascertain and report upon the matters and things mentioned in said decree. Printed record, pp. 116, 117.

The report of said master is found in the printed record on pages 117 to 125, inclusive.

This report was excepted to by counsel for the plaintiff on the 8th day of May, 1882. *Id.*, p. 125. And the court, without passing upon the exceptions, re-committed the report to the master on the 18th day of November, 1882, "with instructions to make a full and complete report of the matters and things contained in the decree of reference to him, and to report upon such other matters and things pertaining to this suit, as either party thereto may in writing require." *Id.*, p. 138.

On the 5th day of May, 1883, the said master filed his report under said last-named decree, which report is found on pages 146 to 152 of the printed record. Both parties filed exceptions to this report. Printed record, pp. 152, 153.

On the 20th day of May, 1882, the defendant, Anthony Lawson, filed his petition for a re-hearing, among other things, of the interlocutory decree made in this cause at the next preceding term of the court, and for leave to file a bill, in the nature of a bill of review, for that purpose, &c. *Id.*, p. 125.

Said petition is found on pages 127 to 130 of the printed record. By reference to page 129, it will be seen that the defendant, Lawson, in his said petition, prayed for another survey of the said tract of land, and that one McDonald, the owner of a moiety of a tract of 700 acres, of which said defendant owned the other moiety, be made a party to the suit, and for leave to file a bill, in the nature of a bill of review, to have the decree deciding that the plaintiff was entitled to an abatement in the price of the Logan lands, set aside, and for leave to file a cross-bill to reform and correct the said two contracts, A and B, &c. All of these prayers were granted by the court. Printed record, pp. 125, 126.

In pursuance of the leave given by the court, the said Lawson, on the 14th day of July, 1882, filed his cross-bill in the clerk's office of said court. This bill is found on pp. 131 to 137 of the printed record.

On the 18th day of November, 1882, the plaintiff moved the court to strike out this cross-bill of the defendant, Law-

son, to which motion objection was made by Lawson, and the court took time to consider thereof. *Id.*, pp. 137, 138.

On the 20th day of May, 1882, the court, on the said petition of Lawson, ordered a survey of the Logan lands in question to be made by John L. Cole, and said Cole, in obedience to said order, made a survey thereof, and reported the same to the court. This report is found on pp. 139 to 143 of the printed record. The said Cole, as appears by this report, made a partition of the said 700 acres between Lawson and McDonald, as required by said decree, and the said report and partition were confirmed by the said court. Printed record, p. 138.

It was shown by said survey and report, that there were 633 acres in the Logan tract of land, instead of but 592, as claimed by the plaintiff in his bill, and the court corrected its former decree, as to that matter, accordingly. *Id.*

On the 5th day of May, 1883, the master, to whom his former report had been re-committed, made his second report, which is found on pp. 146 to 152, of the printed record. Both parties excepted to this report. *Id.*, pp. 152, 153.

On the 8th day of November, 1883, Master Commissioner Ruffner made a report in this cause, which report is found on pages 153 to 160 of the printed record.

The defendant, Lawson, filed exceptions to said report, which are found on pages 161, 162 and 163 of said record. And on the 15th day of November, 1883, a decree was rendered by said court, overruling said exceptions and confirming said report. Printed record, p. 163.

On the 26th day of November, 1883, a final decree was made in this cause, reciting the filing of an amended and supplemental report by said Master Commissioner Ruffner, which report is found on pages 165, 166, of the printed record.

The defendant, Lawson, filed exceptions to this report, which are found on pages 167, 168, of said record. These exceptions were overruled by the court, and the said last-named report was confirmed. This report was made, so far as appears, of the commissioner's own motion, no decree

having been made directing him to do so, and after his former report had been confirmed.

His first report, which was confirmed as aforesaid, finds that the amount due from Lawson to Floyd was $7,112.54, and this report stands unchanged, unless the subsequent report, made without authority, changes it. It is not referred to in the final decree. By this final decree, the sum of $5,046.40 is found to be due from Lawson to Floyd, and the same is thereby decreed to be paid by said Lawson to Floyd, with interest thereon from the 1st day of November, 1883, till paid. Said Lawson is also thereby required, within 90 days from the rising of the court, to convey said Logan lands to the plaintiff, &c., and to pay the costs of the suit.

ASSIGNMENTS OF ERROR.

The appellant and plaintiff in error assigns as errors in the decrees and proceedings of the said District Court in this cause, the following:

1. The court erred in holding and deciding that the plaintiff in the court below was entitled to an abatement in the price of the Logan lands, in controversy in this suit.

2. The court erred in holding and deciding, as it did in effect, that the alleged sale of the Logan lands was a sale, by the acre, of 1,000 acres, and not a sale in gross.

3. The court erred in holding and deciding that the contract of the 2nd of December, 1857, was a contract for the sale of 1,000 acres of land, and that the clause of warranty therein was a warranty of quantity.

4. The court erred in holding and deciding, as it did in effect, that the said Floyd was induced to enter into the said contract by the false and fraudulent representations of the said Lawson.

5. The court erred in holding and deciding that the said

contract of December 2d, 1857, was still in full force, and unaffected by the subsequent contract of August 3d, 1871.

6. The court erred in overruling the exceptions, and each of them, filed by said Lawson to the reports, and each of them, of the said Commissioner Ruffner.

7. The court erred in confirming the said reports, and each of them, of said Commissioner Ruffner.

8. The court erred in holding and deciding that there was due from the said Lawson to the said Floyd, the sum of $5,046.40, as stated in said final decree.

9. The court erred in holding and deciding that any sum, whatever, was due from the said Lawson to the said Floyd.

10. The pleadings and proofs in the case showed that there was due from the said Floyd to the said Lawson, for the said Logan lands and lots, at the date of said final decree, the sum of $3,000, at the least, and the court erred in failing and refusing to so find and decree.

11. The principle upon which the court held and decided that the said Floyd was entitled to an abatement in the price of the Logan lands, and the amount of such abatement, was erroneous, and the court erred in adopting it.

12. The bill of the said Floyd should have been dismissed for want of equity, as well as for want of jurisdiction, and the court erred in failing to dismiss the same.

POINTS.

I.

The contract of December 2d, 1858, between Floyd and Lawson, was neither in law nor in fact, a sale of the lands, by the one to the other, by the acre, but was a sale in gross.

By reference to this agreement, it will be seen that Floyd sells to Lawson, for $26,000, two tracts of land, adjoining

each other, one called the "Waterford place," supposed to contain 802 acres, and the other known as the "Smith place," supposed to contain 467 acres. The title to the Waterford place was in John B. Floyd, and the title to the Smith place was in Ballard P. Smith. Lawson was to pay the purchase money as follows: To Ballard P. Smith, the amount for which the said Smith place was sold under a decree of the circuit court of Washington county, supposed to be $8,410, but if that was not the true sum, it was to be ascertained and paid by said Lawson; and to A. S. Gray $9,850, in three installments. And also to convey to said Floyd the property of said Lawson, at Logan Court-House, "consisting of five half-acre lots, viz: Nos. 8, 9, 10, 11 and 12, in the original plan of the town of Lawnsville, now Aracoma, and about 1,000 acres of land lying on the east side of Guyandotte and north of Aracoma, being all the lands owned by said Lawson below or north of Kezee's branch, lying back of lots Nos. 6 and 7, and below the public square, and down as far as McDonald's land." In this connection, the attention of the court is called to the map of this land, made by surveyor Cole, found in the record. The line of division between the lands of Lawson and the McDonald lands, is shown on said map by the figure 37, and the line running back from the river, therefrom, to the figure 47. The agreement then says: "And the said Lawson puts the property at $10,000, and the said Lawson is to make the said Floyd a deed with general warranty and relinquishment of dower to the above described property, except one recent grant, and part of another tract lying back from the river, which he is only to convey specially," &c.

The loose manner in which this contract is drawn, of itself, shows, that neither of the parties were looking or caring for quantity. No provision is made for a survey of any of the lands mentioned in the contract, and Floyd was content to take a deed, with special warranty, for one recent survey, and part of another, lying back from the river, without specifying the date of either survey or grant, or the quantity contained

or supposed to be in either. The part of the recent survey alluded to, was evidently the 700 acres, or nearly that, partitioned by Cole, between Floyd and McDonald, which gave Floyd 333 acres, to be conveyed with covenants of special warranty. How much there may be of the other tract to be so conveyed, we don't know. It may be the half, or two-thirds or three-fourths of the remainder. If this land had been described simply as *about* 1,000 acres, and stopped there, it would not have amounted to anything more than if the words used had been "1,000 acres, more or less," but it don't stop there, but continues, "being *all the lands owned by said Lawson*, below or north of Kezee's branch," &c.

It will hardly be contended that, if there had been more than 1,000 acres in the boundary owned by Lawson and described in the contract, that Floyd would not have been entitled to a conveyance of the whole when he complied with his contract. And I respectfully submit that he would have been so entitled, beyond all question. And if I am right in this, the controversy is ended, for if he would have been entitled to the excess, he must submit to the deficiency.

And I submit further, that the language used in the contract is simply descriptive of the land to be conveyed by Lawson to Floyd, and does not, and cannot, amount to a warranty of quantity.

On this subject see Crislip, Guardian, &c. vs. Cain, 19 West Va. Rep., 438.

The constitution of West Virginia, Article 8, sec. 5, requires the Court of Appeals of the State "to prepare a syllabus of the points adjudicated in each case concurred in by three of the judges thereof, which shall be prefixed to the published report of the case."

The decision of the said court in the case referred to covers, I think, every point arising on this appeal.

Upon the point now under consideration, the court is referred to paragraphs 18, 19 and 22, of the syllabus to the above cited case.

See also Ketchum vs. Stout, 20 Ohio Rep., pp. 453, 463.

II.

The contract of December 2d, 1857, between the parties, was a contract of hazzard, on both sides, and neither party was entitled thereunder to compensation for any excess or deficiency in the number of acres in either of the tracts of land therein mentioned.

Upon this point, see the authorities above cited.

III.

The contract of December 2nd, 1857, was rescinded by that of August 3d, 1871, and this case must be decided on that contract, regardless of the other.

By reference to this contract, it will be seen that the account between Floyd and Lawson, then in suit between them, growing out of said first-named contract, was settled and compromised, and the amount then due from Floyd to Lawson was fixed at $5,051.30, payable in three installments, as therein specified. And the said John W. Johnston became a party to said last-named contract, and bound himself thereby to pay to the said Lawson the said sum of money, with its interest, as the same became due and payable. The said contract then provides as follows:

"And it is further agreed that said Lawson and said Floyd shall each, and they do hereby bind themselves, that the property and the control of the tract of land herein mentioned, sold by said Lawson to said Floyd, estimated to contain 1,000 acres, shall be in said Johnston, as an indemnity to him, which is described as follows, viz: 'All the land owned by said Lawson, lying below the Kezees branch, above Aracoma, lying back of lots Nos. 5, 6 and 7, in the original plan of the town of Lawnsville (now Aracoma), including the following town lots as laid down in said plan of the town

of Lawnsville, viz: Nos. 8, 9, 10, 11 and 12; thence down the river to box-elders at the lower end of said Lawson's land; thence with the division line between said Lawson's land and McDonald's land; thence up the point of the ridge below the sugar camp hollow to the back line of said Lawson's land; thence with the back line to said Kezee's branch, and thence down the same to the beginning;" &c.

In this contract the land is described as the land sold by said Lawson to said Floyd, *estimated* to contain 1,000 acres, and in the first contract it is described as *about* 1,000 acres. In both contracts it is described as "all the land owned by said Lawson lying below Kezee's branch," &c. But the boundary lines of the land set out in the last-named contract are very different from those contained in the first contract. The said last-named contract being essentially different from the first, must govern this case.

IV.

But, if the contract of August 3, 1871, does not supersede that of December 2nd, 1857, it is undoubtedly a modification of that contract to the extent in which they differ, as above stated.

The contract between the parties is, therefore, to be considered as a sale of *all the lands* owned by Lawson below Kezee's branch, with the exterior lines thereof specifically set out therein, *estimated* to contain 1,000 acres. And this brings it more clearly within the principles decided in the cases above cited.

V.

The allegations of fraud and misrepresentation contained in the bill in this cause are not sustained by the evidence.

All of these allegations are specifically denied by the answer

of Lawson, and the plaintiff, Floyd, has utterly failed to prove them.

The evidence in the record in reference to this matter, is as follows:

On cross-examination of the defendant Lawson, who was sworn as a witness on his own behalf, he was asked the following question:

"Did you at any time before making the contract of December 2d, 1857, represent to the plaintiff that there was about 1,000 acres of land in the boundary sold to the plaintiff, or at the time of executing the contract?" To which said Lawson answered:

"I did not before the making of said contract, at any time, make any such representations. I don't know who mentioned the thousand acres at the time of the writing of the contract, but I know that I objected to mentioning *of* any number of acres; but Mr. John W. Johnston, who was writing the contract, said that it would make no difference, as he would describe it in the contract by its boundaries. I know that I never represented it as having a thousand acres at the time of making the contract, or at any other time, but I did represent it as a tract that had never been measured, and I did not know the quantity it contained." Printed record, p. 89.

And in answer to a question found on page 102 of the printed record, in reference to the character of the sale of the Logan lands, whether it was in gross or by the acre, he says:

"It was a sale of my property here to the plaintiff in gross; there was no price fixed per acre; I sold it to him for $10,000, by the boundary as set forth in the contract of 2d December, 1857. There was nothing said at the time of the sale about it being sold by the acre; neither tract of land was to be measured. I took the tracts I got for $26,000, and sold the land to Floyd for $10,000."

Again said Lawson is asked by his counsel the following questions, and to which he gave the following answers:

Question.—"What representations, if any, did you make to the said plaintiff as to the quantity of acres of the Logan lands?"

Answer.—"Nothing was said about quantity that I recollect of, until the contract was reduced to writing, the 2d December, 1857."

Question.—"What knowledge, if any, did you have at the time said contract was agreed upon, as well as at the time it was executed, as to the quantity of the lands in question?"

Answer.—"None, so far as measurement was concerned. I had been over them and had seen them, but had never had them surveyed, or known of them being surveyed."

Question.—"What knowledge, if any, did you have, at the time of the last named contract mentioned in the bill, as to the quantity of said Logan land, and what, if anything, was said on the subject by the parties, or any of them, yourself included?"

Answer.—"I had no more knowledge then as to the quantity than I did at the time of entering into the contract of December 2d, 1857. Mr. Johnston was writing the contract of August 3d, 1871. He asked the quantity of acres. Col. Floyd answered about 1,000 acres. I replied that I would guarantee no quantity of acres whatever; that the tract was made up of several tracts and parts of tracts, and that I didn't know how much was in it. Mr. Johnston then said he would put it at about 1,000 acres, or estimate it at that quantity, and said he would set out the boundaries of said land as all the land I owned between Kezee's branch and to the McDonald line, as set out in the contract of August 3d, 1871."

Question.—"If there is such a deficiency in the estimated quantity of said Logan lands, as claimed by the plaintiff, and you had known the fact at the time of the contract of sale from you to the plaintiff, would you have sold them for any

less sum in the contract of sale as made by you and the plaintiff, than the sum for which you did sell them by that contract?"

Answer.—"I would not have taken one dollar less, no matter what the deficiency was, and taken the Waterford land at $16,000. I consider the chief value of my Logan lands consisted in the town lots and buildings and the bottom land, and coal bank."

Question.—"Then what was the principal or chief inducement that led you to give the $16,000 for the Waterford lands?"

Answer.—"It was the taking of the Logan lands in gross at $10,000, and that was the inducement and the only reason, in fact, for buying the Waterford land." Printed record, pp. 103, 104 and 105."

And in answer to a question asked him, found on page 103 of the record, said Lawson says, among other things, that the proposition for the trade of the lands was made to him by Floyd at Tazewell Court-house, and that some time in the summer or fall of 1857, the terms were agreed on at his home at Logan Court-house, but that the contract was not reduced to writing until December 2nd, 1857, at Tazewell Court-house. He then says: "I agreed to pay $16,000.00 for the Waterford tract, in consideration that they would take my Logan lands at $10,000.00, I having been offered the Waterford lands at $10,000.00, cash, and could have bought it for that sum. The plaintiff was acting as agent for his brother, Jno. B. Floyd, as to the Waterford land, the legal title to said land being in said Jno. B. Floyd."

The defendant, John W. Johnston, was examined as a witness, on behalf of defendant Lawson, as well as on his own behalf, and in answer to a question, as to his knowledge in reference to the quantity of the Logan lands, and what was said by Lawson and Floyd, as to the quantity of the land, &c., he says:

"I had no knowledge at all of the quantity of said land;

I knew nothing about it; I wrote the contract, Messrs. Floyd and Lawson sitting at the table. When I came to that part of the contract where I had to describe the number of acres, I asked the question, addressed to both of them, how many acres there were. Mr. Floyd said, 'A thousand;' Mr. Lawson said, 'No; I won't be bound to any particular number of acres: there are several tracts, and I don't know how they would run out.' Then I used the language contained in the contract, describing the land, which seemed to be satisfactory to them both."

This is all the evidence in the record bearing upon the charges of fraud and misrepresentation contained in the bill, and it not only fails to sustain those charges, but it proves them to be without the slightest foundation, in fact.

And this being the only ground upon which the relief prayed for in the bill is predicated, the decrees granting Floyd that relief were plainly erroneous.

It is not alleged in the bill that the defendant, Lawson, *knew* the quantity of land contained in the tract, or that he fraudulently concealed any knowledge he had, as to the quantity thereof, but the charge is that he "wilfully, knowingly and falsely represented unto the plaintiff (at the time of entering into said contract A) that the said Logan lands contained 'about one thousand acres,' and thereby induced this plaintiff to enter into said contract," &c.

Printed record, p. 6.

This charge is not only, as we have seen, denied by the answer of Lawson, but is unsupported by evidence, and, in fact, is disproved by the evidence. And, in view of the evidence of both Lawson and Johnston, as to what was said by both Floyd and Lawson, at the writing of the second contract, as to the quantity of the land, the failure of Floyd to remind Lawson of what he had told him (Floyd) as to the quantity of the land, at and before the execution of the former contract, is certainly remarkable, if Lawson had, in fact,

made the representations charged in the bill. His silence is, I submit, the strongest evidence against him.

The allegations of fraud and misrepresentation being thus wholly disproved, no citation of authorities is deemed necessary here.

VI.

But, even if the said Floyd was, upon any principle, entitled to an abatement of the price at which the Logan land was sold to him, the principle upon which the court made that abatement was not the proper one.

Commissioner Fontaine reports the value of the lots Nos. 8, 9, 10, 11 and 12, with the buildings thereon, at $4,500.00 as to which there was no exception by either side, and that part of his report was confirmed by the court.

Printed record pp. 121, 147.

This $4,500 is deducted by the commissioner from the $10,000, the purchase price of the lands and lots, leaving a balance of $5,500 for the land outside of the lots, and he fixes the price of the 1,000 acres at $5.50 per acre, to make up the $5,500. He finds the deficiency to be 368 acres, which, at $5.50 per acre, amounts to the sum of $2,024.00, which sum with interest from the 8th day of January, 1858 to May 5th, 1883, amounting in all to $5,100.48, he finds to be due from Lawson to Floyd. *Id* pp. 147, 148.

This statement of the account was accepted as correct by the counsel of Floyd, and formed the basis of the final decree rendered in the cause.

Id. p. 152.

The rule thus adopted by the commissioner and the court was, I submit, not the proper rule, under the evidence in the case.

This land, as appears by the evidence, consisted of from 20 to 25 acres of bottom land adjoining the town, worth about $100.00 per acre; 11 to 14 acres of a second bottom below the other, worth from $30.00 to $50.00 per acre; the

bottom part of 50 acres, at the lower end of the tract, sold to Isaac Morgan, being about ⅔ thereof, $20.00 per acre; cleared hill land, 80 to 100 acres, worth from $10.00 to $15.00 per acre; and the balance of the land from 50 cents to $1.50 per acre.

Printed record, pp. 80, 81, 84, 88, 90, 91, 92, 93, 104.

If Floyd was entitled to any compensation on account of a deficiency in the number of acres, which we deny, his claim was for unliquidated damages, only, as this relief could not be given him in a court of equity. Crislip, Guardian, vs. Cain, above referred to. Paragraph 5 of syllabus.

VII.

The exceptions of the said Lawson to the report of Commissioner Fontaine, finding that there was due from him to the plaintiff, Floyd, the sum of $5,100.48, *should have been sustained by the court.*

What is said in support of the last point is referred to in support of this.

VIII.

The exceptions of the said Lawson to the reports of Commissioner Ruffner, and each of them, should have been sustained.

As the final decree of the court was, however, based upon the last of said reports, it is only deemed necessary to discuss the exceptions to it.

This report is found on pp. 165, 166, of the printed record.

The statement of the account in this report is based on the contract of August 3d, 1871, and credits the $5,051.30, then due from Floyd to Lawson, with $2,024.00, the amount of the abatement allowed by Commissioner Fontaine, and allows Floyd interest on that sum from August 3d, 1871, to the date of his report, $1,647.87, making in all a credit of

$3,671.87, leaving a balance due to Lawson of $1,379.43 only. at the date of the second contract, instead of $3,027.30. Here is a fatal error to start with. If the abatement of $2,024.00 was properly allowed, that sum alone, without interest, should have been deducted from the $5,051.30, as of the date of the contract, August 3d, 1871, leaving a balance due Lawson of $3,027.30.

But the commissioner allows interest on the abatement, $2,024.00, from the date of the contract to the date of his report, November 26, 1883, amounting to $1,647 87, and deducts this sum, also, from the $5,051.30, at the date of the contract, which leaves a balance of only $1,379.43 due to Lawson on the 3d day of August, 1871. On this balance he allows interest to September 21, 1873, $100.64, making the amount due Lawson, on that day, $1,480.07.

Then he credits Floyd with $603.00, and leaves a balance due to Lawson, at the last-named date, of $867.07 only. Then he adds interest to July 10th, 1874, $41.76, making the amount due Lawson, at that date, $908.83. At this date Johnston made his first payment, under his contract, to Lawson, of $1,500.00.

This payment, after deducting from it the said $908.83, left a balance, as reported, against Lawson of $591.17, which the commissioner erroneously reports as due to Floyd, instead of Johnston. The correct account, at that date, was about as follows:

Due Lawson Aug. 3d, 1871	$ 3,027 30
Interest to Sept. 21, 1873	373 39
Balance due Lawson	$ 3,405 69
Credit payments by Sidebottom & Nighbut	603 00
Balance due Lawson	$ 2,902 69
Paid by Johnston, same date	1,500 00
Balance due Lawson	$ 1,402 69

The next payment by Johnston to Lawson was $2,684.00, July 21st, 1874. This payment exceeded the balance due

Lawson, by this plan of settlement, by $1,281.31, or about that sum. I have not attempted exact accuracy, as to the figures. But this was not a debt due to Floyd, but to Johnston, if it was a debt at all.

Afterwards, on the 9th of June, 1882, Lawson repaid to Johnston $1,395.00, in pursuance of a decree in this cause. Printed record, p. 126. This left Lawson behind with Johnston about $500.00.

The only sum received by Lawson, after the last payment by Johnston, to which Floyd is entitled by way of credit, or otherwise, was the $719.25, from Larkins Justice, on June 20th, 1876, and this sum, with its interest, is all that Floyd would be entitled to, if this mode of settlement was the correct one. The other charges, on page 166 of the printed record, against Lawson, are all improper, and should not have been allowed.

IX.

The court manifestly erred in overruling the exceptions of said Lawson to said report of Commissioner Ruffner, and in rendering a decree confirming the same, and for the payment by Lawson to Floyd of the sum of $5,046.40 *with interest.*

X.

The plaintiff, Floyd, was not entitled to compensation, in any form, for the alleged deficiency in the quantity of the Logan lands.

Under the evidence in this case, Floyd sustained no injury whatever by reason of the alleged deficiency in the number of acres in the tract. At the date of the contract he had nothing of his own to sell. He had bought the "Smith place" at a judicial sale, but had paid no part of the purchase-money, as the language of the contract shows. It requires Lawson to pay to "Ballard P. Smith the amount for which

said Smith place sold for under a decree of the circuit court of Washington county," &c.

He tells us in his bill that at the date of the first contract he was financially embarrassed, and in great need of money, and that he could not take the hazzard of coming to Logan to find out the quantity of the land there, as he might thereby lose the sale of the Tazewell lands, &c., &c. In other words, that he was in debt for the whole purchase-money of the "Smith place," and the only way he had of paying for it was to make the trade with Lawson.

As to the "Waterford place," it was the property of his brother, John B. Floyd, and he acted simply as his agent, and it was necessary to connect the sale of that place with the other, and take the Logan lands in part pay, as Lawson would not make the trade unless that was done.

All the interest he had in the Smith place was a right to pay the purchase-money and get his deed for it, which he was unable to do. He proposed the trade with Lawson himself, and made the proposition to take Lawson's Logan lands and lots at $10,000, in part payment for the two farms at $26,000, with an agreement to pay Lawson the difference between $6,000 and the amount Lawson was to pay to Smith, which difference was $2,667.50, which sum he agreed to pay when he took possession of the Logan property.

Lawson paid his debt to Smith, amounting to $8,667,50, and the $9,850.00 to Gray, amounting, in all, to $18,517.50. Floyd took possession of the Logan property soon after the date of the contract, and held and occupied it from that time till 1866, without ever paying a single dollar of principal or interest of the sum he bound himself to pay; Lawson became tired of waiting, and, in 1866, he commenced a suit in equity in the Circuit Court of Logan county, to enforce his vendor's lien for the purchase-money due him. And, in 1871, this suit was compromised by the agreement of August 3, of that year. Floyed *owned* nothing which entered into the purchase of this land in the start. He used and occupied it for fourteen years, paying nothing all these years, and to this day *he* has

never paid a single dollar of the amount he owes for the land. And, during the time, the evidence shows that he sold lots 11 and 12 to Buskirk, for $700.00; and fifty acres of the land, at the lower end of the tract, to Morgan, for $800.00; and that he sold timber from the land, amounting to $800.00, and a small lot of land to John Buskirk for $50.00, amounting in all to $2,350.00. The only monies ever paid to Lawson was paid by persons who purchased parts of the land and lots after the second contract was made, and by Johnston under that contract.

And now, as to the value of the Logan lands at the time this trouble began, as well as at the date of the first contract: As already shown the value of the five lots, 8, 9, 10, 11 and 12, with the buildings thereon, was $4,500.00. There were from twenty to twenty-five acres of bottom land adjoining the town, say 22½ acres, worth $100.00 per acre, $2,250.00; from 11 to 14 acres of a second bottom, say 12½ acres, worth from $30.00 to $50.00, say $40.00 per acre, $500.00; the bottom land in the 50 acres sold to Morgan, about 33 acres, worth $20.00 per acre, $660.00; from 80 to 100 acres of cleared hill land, say 90 acres, worth from $10.00 to $15.00 per acre, say $12.50 per acre, $1,125.00—in all, $4,535.00 for 158 acres, of the 633 acres in the tract. This leaves 475 acres of the land which Floyd proves by his witness White, were worth $10.00 per acre, and according to his own showing, these 475 acres were worth $4,750.00; making the value of the whole tract, $9,285.00, in addition to the $4,500.00 for the lots and buildings, which, added to the whole property, makes the value, $13,785.00.

The evidence further shows that Floyd made a new plan of the town, laying it off into lots, streets and alleys, regardless of the old plan, and laying the old lots and a part of the bottom lands into lots smaller than the old ones. And he avers in his bill, that in order to pay Lawson's debt, he, as the agent of Johnston, sold 16 of said lots, 28 acres, (which the evidence shows was on the hill-side,) and 10 acres, (also on the hill-side,) for $5,160.00. See the printed record, p. 4.

And on page 7 of the record, he avers in his bill that Lawson, Johnston, and James M. Payne, "contriving and intending to vex, harrass and impoverish" him, have commenced suits to enforce the contracts so made by him as agent, and that there was, at the time said suits were commenced, "a sufficient quantity of said lands, unincumbered by prior lien, out of which to enforce" the collection of Lawson's debt, "without interfering and utterly disregarding sales of land which this plaintiff had made as aforesaid." Here again, by his own showing, the Logan property was worth more than $10,000. He had first sold lots 11 and 12 and the 50 acres to Buskirk and Morgan for $1,500; the small lot to Buskirk, $50.00; and timber, $800.00, as above stated. He had sold, as the agent of Johnston, the lands and lots mentioned in his bill, for $5,160, and there was still enough of the property left unsold to pay Lawson's debt, then amounting to considerably more than $5,000.

And with all this, Mr. Floyd has the face to come into a court of equity and ask for $5,046.40 more, with interest and costs. What for, we would like to know?

And the court will bear in mind that Mr. Floyd is not a party to either of deeds of conveyance of the Tazewell lands to Lawson. So that Lawson's estate has no remedy against him, for any deficiency there might be in either of these tracts.

It is, therefore, respectfully submitted, that the decrees appealed from in this case should be reversed, and the plaintiff's bill dismissed, or that the cause be remanded for further proceedings.

JAMES H. FERGUSON,
Of Counsel for Appellant and Plaintiff in Error.

NOTE.—Since the printing of the foregoing brief, an agreement has been made by counsel, supplying defects in the record of this case, which will be printed and filed with the record, and as a part thereof.

The evidence of the plaintiff, Floyd, thus supplied, I submit, makes no difference in the legal aspect of the case. There is still a failure of proof on his part to sustain the allegations of fraud and misrepresentations set out in his bill.

JAMES H. FERGUSON,
Of Counsel for Appellant.

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Supreme Court of the United States

October Term, 1887.—No. 122.

ANTHONY LAWSON, APPELLANT,

vs.

GEORGE R. C. FLOYD.

Appeal from the District Court of the United States for the District of West Virginia.

BRIEF OF CORNELIUS C. WATTS, OF COUNSEL FOR APPELLEE.

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Appeal from the District Court of the United States for the District of West Virginia.

BRIEF OF CORNELIUS C. WATTS, OF COUNSEL FOR APPELLEE.

In this case the appellant claims to be aggrieved by the decision and final decree rendered herein on the 26th day of November, 1883, by the District Court of the United States for the District of West Virginia, sitting at Charleston, with Circuit Court powers.

By inspection of the appellee's bill of complaint, filed in this cause on the 6th day of October, 1877, (see record page 1,) it will be seen, that on the 2d day of December, 1857, the appellant and appellee entered into a contract in writing, under seal, for the sale and exchange of certain lands in said

contract named and specified, which said contract is filed as "Exhibit A" with appellee's bill of complaint, (see record page 14.) By the terms of said contract—"Exhibit A"—the said appellant agreed for the sum of $10,000, to be paid as therein provided, "to convey to the said Floyd the property of said Lawson at Logan Court House, consisting of five half acre lots, viz: Nos. 8, 9, 10, 11 and 12 in the original plan of the town of Lawnsville, now Aracoma; and about 1,000 acres of land lying on the east side of Guyandotte; and north of Aracoma, being all the lands owned by said Lawson below or north of Keesee's branch, lying back of lot No. 6 and 7, and below the public square, and down as far as McDonald's land; and the said Lawson puts the property at ten thousand dollars."

The appellee at once took possession of said property, including the tract of "about 1,000 acres," and moved upon the same.

At the time of entering into the said contract ("Exhibit A") the appellee had no knowledge as to quantity of the Logan lands and especially of the tract of "*about 1,000 acres.*" In his bill of complaint, (see record page 5), appellee uses this language; "and the plaintiff further represents that at the time of his entering into the original contract (above mentioned, marked A,) with the defendant Anthony Lawson, he was wholly unacquainted with the Logan lands mentioned in said contract, as to the quantity of the same, except that part mentioned in the part of the town as originally laid off, and that portion immediately around said town; that this plaintiff resided at the time out of said county, at Warfield, in the state of Kentucky; that he did not know the number of acres contained in said boundary of land, and had no means of ascertaining the same, and that the said contract was made and entered into at Tazwell Court House, in the state of Virginia, nearly one hundred miles from said lands; in consequence of all which, the plaintiff had to rely, and did rely upon the statement and representation of said Anthony

Lawson as to the quantity of the said lands; that his relations with the said Anothony Lawson were at the time of said contract, of the most intimate character, having had frequent dealings before that time with the said Lawson, with regard to money matters and real estate. All of which had caused the plaintiff to place implicit confidence in the said Anthony Lawson, and to regard his word as fully to be relied upon and accepted in business transactions of whatever kind and character. The plaintiff charges that notwithstanding their former business transactions and intimate relations, the said Anthony Lawson wilfully, knowingly and falsely represented unto this plaintiff (at the time of entering into said contract A,) that the said Logan lands contained "*abvut one thousand acres*," and thereby induced this plaintiff to enter into said contract for the Logan lands as set out in the agreement of 2nd day of December 1857; that the plaintiff would not have entered into said contract but for said representations so made as aforesaid by the said Lawson, in whom he was induced to confide by the intimacy of their relations, and the business transactions before that time had between them as above set forth; that the plaintiff was financially embarrassed and was in great need of money at the time of entering into said contract, and was induced by the said Lawson to yield to his representations and to make the trade mentioned in the said contract. That if he had taken time to come to the county of Logan to have ascertained the quantity of land he would in all probability have lost the opportunity of effecting the sale of his Tazwell lands, and relieving himself of his embarrassments; that he deemed it unnecessary to hazard such an opportunity, having such implicit confidence in the man with whom he was dealing."

In the year 186—, the appellant instituted a suit in chancery against appellee which was compromised on the 3rd day of August 1871, by and under an agreement in writing of that date and filed with appellee's bill in this cause as "Exhibit B," (see record page 15).

In Exhibit B, reference is again made to the *1,000-acre tract of land*. This time the words, "*Estimated* to contain 1,000 acres," are used, then follows a more elaborate and particular description of the land than is in "Exhibit A."

As shown in the bill, (record page 6,) the appellee, at the time of the compromised contract of 1871, was still ignorant of any deficiency in the quantity of the Logan land. That in the fall of 1875, he conceived the idea of disposing, by sale, of a portion of said land, and with that view, caused the same to be surveyed, running said survey "with reference to the description set forth in Exhibits A and B, as shown by the plat of surveyor, filed as "Exhibit C," record page 31, (between 15 and 16); that said survey disclosed to appellee the fact that instead of there being "about 1,000 acres" in the tract, there were, in the aggregate, only 592 acres, being a deficiency of 408 acres, (record page 6)

This was the first that the appellee knew of this deficiency, and he took prompt steps to inform the appellant of the same, and to endeavor to have him make amends therefor, as shown by the following letter:

"LOGAN COUNTY, WEST VA, March 6, 1876.

"MR. A. LAWSON.

"*Dear Sir*:—I have had the land you sold me at the court house surveyed, as called for in your title bond to me. You sold me one thousand acres. There is not quite six hundred. I wish you would repay Mr. John W. Johnston the money he has paid you, as he is pressing me for it, and the balance you will be due me. We can settle when you come down to our court in April. I have no news.

"I am, as ever, yours truly,

"GEORGE R. C. FLOYD."

"P. S.—I will send you a copy of the survey if you desire it."

Record page 41.

After waiting in vain for the appellant to respond on the matter of deficiency, the appellee, on the 6th day of October,

1877, filed his bill of complaint in this cause against the appellant and others, praying for relief by way of an abatement in the purchase money of said lands, in consequence of the aforesaid deficiency.

The appellant filed his answer denying many of the material allegations in the bill—among others the alleged representations. But it is not denied that contract (Exhibit A,) was entered into just as it appears on its face; it is not dedied that both parties to said contract knew the meaning and understood the significance of the words, "*about one thousand acres.*" The appellant, Lawson, admits tha the had owned the Logan lands for ten years, and had known them as his father's for many years more, and that he himself had lived on them since a small boy. It does not appear anywhere in the contract ("Exhibit A") that Lawson disclosed any want of knowledge as to the true quantity of the lands. He denies in his answer all knowledge as to *quantity*, and yet he executes a contract in which he himself nominates *the quantity as being "about 1,000 acres."* It will not do for him to say that he don't know whether he or Floyd named the quantity as being "about 1,000 acres," to be inserted in tne contract of sale, because Floyd is shown to have been at that time an entire stranger to the land, that he lived in another State, viz, Kentucky, and was then nearly 100 miles from the land in the State of Virginia. (record page 5,) while Lawson had lived on the land from early boyhood.

Several interlocutory decrees were entered in the cause, one, among others, on the 23rd day of November, 1881, (record pp. 116 and 117) adjudging the appellee Floyd on the pleadings and the proofs in the cause, to be entitled to an abatement in the purchase money, and ascertaining the deficiency to be 408 acres.

Afterwards, on the 18th day of November, 1882, the court entered another decree, ascertaining the deficiency in said 1,000 acre tract to be 368 acres, instead of 408 acres, and re-

forming and modifying its former decrees in that respect and to that extent. Record p. 138.

On the 28th day of May, 1883, this cause was, by decree of that date, referred to Master Commissioner Joseph Ruffner, to take, state and report an account of the indebtedness between Floyd and Lawson, taking into account the said abatement based upon the said deficiency of 368 acres in the tract of "about 1,000 acres." This last decree was not copied into the record by the clerk in making out the transcript thereof, but it has since been copied and by agreement is to be considered with, and as part of, the record.

Master Commissioner Ruffner, on the 8th day of November, 1883, filed his report under said last decree, (record page 153.) and on the 15th day of November, 1883, at the same term of the court said report was approved and confirmed. Record page 163.

On Nov. 26th, 1883, and during same term of the court, Commissioner Ruffner filed an amended and supplemental report, in pursuance of a former decree rendered at the same term. (Record page 164.) Which last report the court approved and confirmed, and at the same term, (record pages 163 and 164,) rendered the final decree in this cause.

Without stopping to go over the evidence of the appellant and appellee, which is, in many essential respects, very conflicting, I may say that the appellee shows, both by his bill and his deposition, that he was a stranger to the Logan lands; that he did not know the quantity thereof; that the appellant told him there were "about 1,000 acres;" that he (appellee) relied on Lawson's statement as to quantity as true; that he bought with reference to the acreage; that Lawson's representation as to quantity influenced and induced appelle to make the purchase, which he otherwise would not have done.

The Appellant denies that he knew the quantity, and that he ever made such representations with reference to quantity.

He did however, undoubtedly represent the quantity to be "about 1000 acres" in the contract, ("Exhibit A.")

Having so represented the quantity in his solemn contract of writing, signed and sealed, he cannot now deny or contradict by oral evidence his representations there made.

Nor can appellant now deny that he intended to make such representations; he is estopped by his own signature and seal from denying the contents of the written contract ("Exhibit A.")

Appellees allegations and evidence are in accord with the contract, ("Exhibit A") while those of the appellant are directly the reverse.

It is respectfully submitted that the contract of 1857, ("Exhibit A,") specifying the quantity of the Logan land with almost exact certainty using the word *about* to show that it might be a little less or a little more, in the sense of "more or less." That it is to be presumed that the estimated quantity was believed to be substantially correct, within 5% of exact accuracy and that it constituted a material element in the determination of the price.

In *Western Mining & Manufacturing Co.*, vs. *Peytona Cannel Coal Co.*, 8 W. Va. Rep. p. 437, Hoffman J. says:

"It is settled in Virginia and West Virginia that when a person has sold and conveyed a tract of land described as containing a definite quantity, at a specified price, it is presumed that the estimated quantity was believed to be substantially correct within 5% of exact accuracy; that it constituted a material element in the determination of the price; and that, unless it appear, that considerable uncertainty or actual risk as to the quantity was contemplated or intended; if in fact the quantity is afterwards ascertained to be materially less, and the purchaser properly asserts his right in a reasonable time, and under reasonable circumcumstances a Court of equity will grant him relief Though the sale be not by the acre, but by the tract in gross, this nevertheless is now the rule of decision."

In this case the deficiency is not simply 5% but over 35%.

In *Blessing's admrs* vs. *Beatty*, 1 Robs. Reports, the leading Virginia decision on this subject, Baldwin J., on pages 302 and 303, says: "The question of compensation usually arises (for reasons already suggested) not in sales by the acre but in sales for a gross sum. In the latter cases, the enquiry to be made in the first place is, whether the parties made a mistaken estimate of the quantity which influenced the price; and then, whether, notwithstanding such mistaken estimate, they have waived the right to compensation by an agreement of hazard. In the absence of all direct evidence, the safest general rule, I think, is, that an estimate of the quantity by the parties, whether in a contract executed or a contract executory, ought to be taken *prima facie* to have influenced the price; for quantity is usually an important element of the agreement and can hardly be supposed to have been disregarded by the parties, or to have been unmeaningly stated by them in a solemn contract. As a mere matter of description in a conveyance, it is, for the most part, useless, and more especially so in an executory contract." In the case at bar, there is certainly a very large mistake to say that Lawson, or Floyd either, could honestly have thought that there were but 632 acres in a tract which they, in solemn contract, designated as "about 1,000 acres," is, to say the least, to attribute to them a remarkable degree of recklessness. The presumption of the law is just the reverse, and this presumption is not rebutted by any clause or provision in said contract agreeing that there should be no survey. But we are not left to the decisions of Virginia, or West Virginia, on this subject; the case of *Hansford* vs. *Thorton*, which came from the District Court of West Virginia to this court, and was here decided in favor of Thornton is in point.

I have been unable to find any publishers report of this case but understand that the decision was announced by the Honorable Chief Justice of this court approving the decision of the court below.

In *Hansford* vs. *Thornton*, Hansford purchased two tracts of land from Thornton, one of 800 acres and the others of 217 acres; the deed from Thornton to Hansfornd in speaking and describing the 800 acres described it as "containing about 800 acres." Identically the same language is used in contract ("Exhibit A") in this case, the language there being, "containing about 1000 acres;" in describing the 217 acres from Thornton to Hansford, the language "estimated to contain 217 acres" is used, while in this case in the contract of August 3rd 1871, (Exhibit B,) the expression "estimated to contain 1000 acres" is used. In Thornton vs. Hansford there was a deficiency of only 33⅓ acres in the 800 acre tract, there being no question of deficiency in the 217 acre tract, while in this case the deficiency is 368 acres. In that case the District Court of W. Va., gave the purchaser relief, and decreed an abatement averaging the price per acre of the entire tract. In this case the District Court of W. Va., gave relief to the purchaser, Floyd, upon the same basis.

In that case there was evidence of representations as to the quantity and value of the bottom lands. In this case there is no such evidence. In that case, as in this, the District Court refused to average with reference to the bottom or uplands, but with the entire tract.

In that case, as in this, the evidence upon the question of representations as to quantity was conflicting, and I respectfully submit that if the decision of the District Court in *Hansford* v. *Thornton* was correct, as this Court by its decision afterwards said it was, that then *a fortiori* was the decision of the District Court in this case correct and that the same will accordingly be affirmed by this Court.

Respectfully submitted by

C. C. WATTS,

Of Counsel for Appellee.